HOMICIDE INVESTIGATION

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HOMICIDE INVESTIGATION

A Pocket Companion for the District Attorney, Lawyer and Detective With a Complete Digest of Evidence Pertaining to Homicide

By

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This Book is Dedicated

To

CHARLES F. KELLEY, Esq.,

First Assistant District Attorney

of Philadelphia County

(In Charge of Homicide Cases)

In Recognition of His Invaluable Criticism.

PREFACE

Homicide Investigation is a subject not only of interest to the detective on the homicide squad of our modern police bureaus, but it is of vital importance to the district attorney and criminal lawyer. It is a subject which cannot be mastered from the study of law. In law school and later in the court rooms, the attorney's attention is given to the mastering of the principles of law and precedent. From my study and observation of the attorney representing the commonwealth or the defendant in a murder case, I have been led to believe that a handbook containing accurate memoranda pertaining to wounds, poisons, identification, and a digest of the law of homicide, would be of great help to him in cross-examining the witness who has averred facts from which the jury will make its deductions.

In compiling this work, I have continually referred to the works listed in the bibliography. I am greatly indebted, however, to the works of Dr. R. Eglesfeld Griffith, Dr. John Chalmers Da Costa, Dr. Alfred W. Herzog, and Dr. Max Trumper, all of whom have brought extensive learning to the study of medical jurisprudence, surgery and toxicology. An honest attempt has been made to give to the attorney and the detective a manual of memoranda gleaned from all

the scientific works listed and from personal experimentation and research.

The notes on poisons, which deal only with the symptoms, when they will appear, the amount that would be fatal and when death will occur, are the consensus of opinion from leading medical authorities. The divisions are based on Dr. Trumper's admirable work.

I have also quoted Dr. Münsterberg and Francis L. Wellman, Esq., in that part of my opus dealing with the questioning of witnesses.

I have also cited in the portion of the book dealing with homicide evidence, excerpts from numerous opinions with references to over two hundred adjudicated cases from many states.

I am not without hope that this manual may be of some use to the district attorney, criminal lawyer and the detective, who may not be able to spare the time to read the more useful treatises to which I am so much indebted.

H.A. FRANKEL.

Philadelphia, Pa.
June 1, 1931

TABLE OF ABBREVIATIONS

Ala.—Alabama Reports.
Ala. App.—Alabama Appeals Reports.
Am. and Eng. Enc. Law—American and English Encyclopedia of Law.
Ash.—Ashmead Reports (Pennsylvania).
Cal.—California Reports.
Can. Supr. Ct. Rep.—Canada Supreme Court Reports.
Com.—Commonwealth.
Conn.—Connecticut Reports.
Cush.—Cushing Reports (Massachusetts).
Cyc.—Corpus Juris—Cyc.
Del.—Delaware Reports.
Fed.—Federal Reporter.
Fed. Cas.—Federal Cases.
Fla.—Florida Reports.
Ga.—Georgia Reports.
Gratt.—Grattan Reports (Virginia).
Harr.—Harrington Reports (Delaware).
Ia.—Iowa Reports.
Id.—Idaho Reports.
Ill.—Illinois Reports.
Ill. App.—Illinois Appeals Reports.
Ind.—Indiana Reports.
Kan.—Kansas Reports.
Ky.—Kentucky Reports.
L. R. A.—Law Reports Annotated.
La.—Louisiana Reports.
Mass.—Massachusetts Reports.
Me.—Maine Reports.
Mich.—Michigan Reports.
Mo.—Missouri Reports.
N. Dak.—North Dakota Reports.
N. J. L.—New Jersey Law Reports.
N. W.—North Western Reporter.
N. Y.—New York Reports.
Nev.—Nevada Reports.
Ohio—Ohio Reports.
Okla.—Oklahoma Reports.
Pa.—Pennsylvania State Reports.
Pa. Supr.—Pennsylvania Superior Court Reports.
Pac.—Pacific Reporter.
Quar. Dig.—Quarterly Digest of Pennsylvania Decisions.
S. and R.—Sergeant and Rawles Reports (Pennsylvania).
S. Dak.—South Dakota Reports.
Tenn.—Tennessee Reports.
U. S.—United States Reports.
W. N. C.—Weekly Notes of Cases (Pennsylvania).
Wright—Wright Reports (Pennsylvania).

TABLE OF CASES

A

Agnello v. U. S., 269 U. S. 20 62
Armstrong v. State, 30 Fla. 170 79

B

Boyd v. State, 82 Tenn. 161 99
Boyne City v. Anderson, 146 Mich. 328 93
Brooks v. Com., 61 Pa. 352 ..... 59, 60
Brotherton v. People, 75 N. Y. 159 79

C

C. & J. Elec. Co. v. Spence, 213 Ill. 220 93
Carmichael v. State, 197 Ala. 185 42
Carrol v. State, 23 Ala. 28 44
Cole v. Com., 201 Ky. 543 62
Coleman v. Com., 25 Gratt. (Va.) 875 97
Com. v. Albright, 101 Pa. Supr. 317 .....26, 27, 28
Anthony, 259 Pa. 65 90
Ashton, 227 Pa. 112 47
Barnes, 199 Pa. 353 77
Bassi, 284 Pa. 81 ..... 87, 90, 92
Bednorciki, 264 Pa. 124 42
Bell, 288 Pa. 29 95
Bell, 102 Mass. 103 85
Berchine, 168 Pa. 603 78
Berney, 28 Pa. Supr. 61 85
Biddle, 200 Pa. 647 95
Bishop, 285 Pa. 49 ..... 3, 44, 46, 68, 85, 91, 92
Blakely, 274 Pa. 100 ..... 88, 89
Brown, 264 Pa. 85 95
Buccieri, 153 Pa. 535 75
Calhoun, 238 Pa. 488 78
Cavalier, 284 Pa. 311 .....44, 45, 71, 72, 74, 78, 98, 99

C

Com. v. Coles, 265 Pa. 362 94
Coontz, 288 Pa. 74 68
Crossmiri, 156 Pa. 304 97
Crowley, 26 Pa. Supr. 124 61
Cunningham, 104 Mass. 545 4
Dabbierio, 290 Pa. 174 62
Dague, 302 Pa. 13 96
Dale, 264 Pa. 362 79
Dantine, 261 Pa. 496 51
Danz, 211 Pa. 507 18
Delfino, 259 Pa. 272 ..... 83, 84
Digeso, 254 Pa. 291 81
Dilworth, 289 Pa. 498 45
Dorr, 216 Mass. 314 99
Dorst, 285 Pa. 232 94
Dreher, 274 Pa. 325 75
Drum, 58 Pa. 9 ..... 70, 73, 75
DuBoise, 269 Pa. 169 82
Dwyer, 79 Pa. Supr. 485 94
Eisenhower, 181 Pa. 470 84
Elias, 76 Pa. Supr. 576 94
Elliot, 292 Pa. 16 ..... 46, 47
Epps, 193 Pa. 512 45
Epps, 298 Pa. 377 47
Fasci, 287 Pa. 1 85
Fiorentino, 266 Pa. 261 72
Flood, 302 Pa. 190 ..... 90, 96
Flori, 300 Pa. 125 42
Fry, 198 Pa. 379 89
Furman, 211 Pa. 549 96
Gable, 7 S. & R. (Pa.) 422 71
Grether, 204 Pa. 203 60
Harman, 4 Pa. 269 53
Hillman, 189 Pa. 548 78
Hilton, 74 Pa. Supr. 20 34
Hutchinson, 19 Mass. 225 96
James, 294 Pa. 156 91
Johnson, 133 Pa. 293 95
Johnson, 213 Pa. 607 46

C

Com. v. Johnston, 98 Pa. Supr. 586 57
Jones, 269 Pa. 589 82
Karamarkovic, 218 Pa. 405 53
Keister, 289 Pa. 225 88
Keller, 191 Pa. 122 ..... 50, 81
Latampa, 226 Pa. 23 43
Lisowski, 274 Pa. 222 ..... 90, 96
Lockett, 291 Pa. 319 43
Long, 17 Pa. Supr. 641 60
Loomis, 270 Pa. 254 97
McMahon, 145 Pa. 413 85
Marshall, 287 Pa. 512 ..... 70, 71, 98
Mayberry, 290 Pa. 195 ..... 71, 88
Max, 8 Phila. (Pa.) 422 ..... 60, 61
Mazarella, 279 Pa. 465 ..... 46, 83, 97
Mellor, 294 Pa. 339 96
Micuso, 273 Pa. 274 71
Miller, 258 Pa. 226 ..... 79, 89
Millien, 291 Pa. 291 ..... 70, 71, 72
Moser, 4 Pa. 264 78
Mudgett, 147 Pa. 211 51
Mulferno, 265 Pa. 247 89
Murray, 2 Ash. (Pa.) 41 90
Myma, 278 Pa. 505 77
Newman, 276 Pa. 534 ..... 86, 87, 89
Page, 265 Pa. 273 71
Palmer, 222, Pa. 299 ..... 67, 75, 80
Patterson, 272 Pa. 522 75
Pezzi, 284 Pa. 85 ..... 87, 88, 89
Prescott, 284 Pa. 255 79
Principatti, 260 Pa. 587 ..... 81, 82
Puglisi, 276 Pa. 235 ..... 68, 97
Puntario, 271 Pa. 501 ..... 42, 89
Reed, 234 Pa. 573 75
Robb, 284 Pa. 99 95
Roddy, 184 Pa. 274 51
Roler, 100 Pa. Supr. 125 ..... 48, 93, 94
Russogulo, 263 Pa. 93 81
Santos, 275 Pa. 515 ..... 78, 83, 100

C

Com. v. Scherer, 266 Pa. 210 ..... 82, 91
Schmous, 162 Pa. 326 ..... 57, 64
Schroeder, 302 Pa. 1 96
Scott, 281 Pa. 548 ..... 74, 75, 90
Smith, 6 S. & R. (Pa.) 568 32
Spardute, 278 Pa. 37 46
Sturtivant, 117 Mass. 122 97
Sushinski, 242 Pa. 406 79
Tenbroeck, 265 Pa. 251 47
Toth, 145 Pa. 308 90
Troup, 302 Pa. 246 61
Troy, 274 Pa. 265 96
Ware, 279 Pa. 282 51
Washington, 202 Pa. 148 89
Webb, 252 Pa. 187 50
Webster, 5 Cush. (Mass.) 295 53
Weinberg, 276 Pa. 255 71
Weiss, 284 Pa. 105 ..... 46, 94
Winter, 289 Pa. 284 ..... 50, 94, 99
Wireback, 190 Pa. 138 78
Zec, 262 Pa., 251 72
Zuern, 16 Pa. Supr. 588 47
Cutliff v. State, 17 Ala. App. 586 78

D

DeCamp v. U. S., 10 Fed. (2nd) 984 93
Dumas v. State, 159 Ala. 42 99
Dupree v. State, 23 Ala. 380 ..... 81, 82

F

Fanning v. State, 14 Mo. 386 85
Fife v. Com., 29 Pa. 429 ..... 45, 47
Fraser v. State, 55 Ga. 325 69

G

Gambino v. U. S., 48 U. S. 137 62
Gebhart v. Skinner, 15 S. & R. (Pa.) 235 97
George v. Harris, 69 Ill. App. 616 62
Gould v. U. S., 255 U. S. 298 62

H

Heine v. Com., 91 Pa. 145 47
Hittner v. State, 19 Ind. 48 85
Holmes v. State, 23 Ala. 17 82
Hopt v. Utah, 120 U. S. 430 99
Houser v. Com., 51 Pa. 332 70

I

In Re Castleton, 3 Crim. App. Rep. (Cohen) 74 ..... 27, 28

J

Joe v. State, 6 Fla. 591 97
Jones v. Com., 75 Pa. 403 75

K

Keenan v. Com., 44 Pa. 55 75
Keener v. State, 18 Ga. 194 81
Kennedy v. People, 39 N. Y. 245 99
Kilpatrick v. Com., 31 Pa. 198 43

L

Logue v. Com., 2 Wright (Pa.) 265 82

Mc

McAleer v. Good, 216 Pa. 473 59
McGary v. State, 200 S. W. 527 (Tex.) 27

M

Martin v. State, 196 Ala. 584 43
Matchin v. Matchin, 6 Pa. 332 47
Miller v. Mintun, 73 Ark. 183 93
Mitchell v. State, 22 Ga. 211 82
Moncur v. Western Life Ind. Co., 269 Pa. 213 93
Moon v. State, 198 Pac. 288 (Ariz.) 28
Moore v. Ohio, 2 Ohio (N. S.) 500 56
Moore v. State, 12 Ala. 764 43

N

Noles v. State, 26 Ala. 31 70

O

Oliver v. State, 17 Ala. 588 80
Onofri v. Com., 20 W. N. C. (Pa.) 264 90

P

Parker v. The King, 14 C. R. L. (Australia) 681 27
Parsons v. State, 21 Ala. 300 84
Penn. Tr. Co. v. Ghriest, 86 Pa. Supr. 71 93
People v. Benham, 160 N. Y. 402 20
Day, 199 Cal. 78 16
Falletto, 202 N. Y. 494 43
Gonzales, 35 N. Y. 49 97
Hurley, 8 Cal. 390 82
Jennings, 252 Ill. 534 ..... 28, 93
Kelley, 28 Cal. 423 85
Loui Tung, 90 Cal. 377 97
Milner, 122 Cal. 171 99
Molineaux, 168 N. Y. 264 69
Pitcher, 15 Mich. 377 85
Roach, 215 N. Y. 592 28
Smith, 26 Cal. 665 82
Willard, 150 Cal. 543 78
Perkins v. Ohio, 5 Ohio Cr. Ct. 597 99
Pond v. People, 8 Mich. 150 82
Preeper v. The Queen, 15 Can. Supr. Ct. Rep. 401 99
Price v. U. S., 2 Okla. Cr. Ct. 449 99

R

Rhodes v. Com., 48 Pa. 396 86
Roesel v. State, 62 N. J. L. 216 46
Russell v. State, 17 Ala. App. 436 77

S

Shaffner v. Com., 72 Pa. 60 94
Shovlin v. Com., 106 Pa. 369 59
Snook v. State, 34 Ohio App. 60 38
State v. Asbell, 57 Kan. 398 99
Austin, 71 Ohio St. 317 77
Barone, 96 N. J. L. 417 51
Brown, 111 La. 696 43
Bruin, 34 Mo. 537 85
Caldwell, 115 N. Car. 794 42
Coleman, 17 S. Dak. 494 57
Collins, 20 Ia. 85 84
Connors, 94 Atl. 812 (N. J. L.) 27
Doiron, 150 La. 550 98
Harman, 3 Harr. (Del.) 567 44
Hays, 23 Mo. 287 81
Hoyt, 47 Conn. 518 91
Hyde, 90 S. Car. 296 78
Johnson, 5 Harr. (Del.) 507 44
Kannish, 23 S. Dak. 465 97
Knight, 43 Nev. 131 93
Lee, 24 Del. 18 77
Maioni, 70 N. J. L. 339 78
Merrick, 19 Me. 398 85
Minneapolis Milk Co., 124 Minn. 34 93
Phelps, 11 Vt. 116 44
Potter, 18 Conn. 166 44
Roe, 12 Vt. 93 56
Rowley, 187 N. W. 7 (Ia.) 62
Whittier, 21 Mo. 341 96
Stephens v. State, 11 Ga. 225 44
Stocking v. State, 7 Ind. 326 68
Sullivan v. Com., 93 Pa. 284 100
Sweeney v. Oil Co., 130 Pa. 193 92

T

Tendrup v. State, 193 Wis. 482 98
Templeton v. People, 27 Mich. 501 70
Toler v. State, 16 Ohio St. 583 84

U

U. S. v. McGlue, 1 Curtis, C. C. 1 75
U. S. v. Taylor, 4 Cranch C. C. 338 42

W

Warren v. Tenth Natl. Bk., 29 Fed. Cas. 287 69
Weeks v. U. S., 232 U. S. 383 62
Whaley v. State, 11 Ga. 123 85
Williams v. Com., 29 Pa. 102 85
Worthington v. Mencer, 17 L. R. A. 407 (Ala.) 97

TABLE OF CONTENTS

CHAP. PAGE

PREFACE

TABLE OF ABBREVIATIONS

TABLE OF CASES CITED

I INVESTIGATION MADE AT THE SCENE OF CRIME 1

Where there are eye-witnesses to the crime..... 1
Where there are no eye-witnesses to the crime..... 5
Gunshot wounds 6
Knife wounds 8
Position of the deceased at the time of infliction of wound 9
Was death caused by wound inflicted..... 10
Blood 11

II INVESTIGATION OF POISON CASES..... 13

Generally 13
Corrosive poisons 16
Sulphuric acid 16
Nitric acid 16
Hydrochloric acid 17
Oxalic acid 17
Carbolic acid 17

Irritant poisons 17
Iodine 18
Arsenic 18
Bichloride of mercury 19

Neurotic poisons 19
Laudanum 19
Strychnine 19
Curare 19
Prussic acid 19
Morphine 20
Belladonna 20

III DROWNING, HANGING, AND STRANGULATION 21

Drowning 21
Hanging 21
Strangulation 22

IV IDENTIFICATION 24

Dactyloscopy 24
Weapons 29
Hair 30
Inks and writings 31

V QUESTIONING THE WITNESSES 37

Dying declarations 42
Confessions 44
Admissions 46

VI EVIDENCE NECESSARY TO CONVICT..... 49

Physical facts 49
Circumstantial evidence 52

VII THE ARREST, SEARCH AND SEIZURE..... 59

The arrest 59
Search and seizure 61

VIII ANALYSIS OF CASE BY INVESTIGATOR.. 63

IX EVIDENCE PERTAINING TO HOMICIDE... 67

When homicide occurs 67
Motive 68
Intent 70
Deliberation and premeditation 73
Malice 75
Defenses of accused 76
Insanity 77
Drunkenness 79
Self-defense 79
Provocation 81
Wife's misconduct 82
Suicide 83
Alibi 83
Mistake or misadventure 84
Death from other cause 84
Acts of accused indicative of guilt 84
Instruments of the crime 88
Evidence in general 90
Evidence of other crimes 94
Competency of witness 96
Medical testimony 97

BIBLIOGRAPHY 101

INDEX 103

HOMICIDE INVESTIGATION

CHAPTER I

INVESTIGATION MADE AT THE SCENE OF THE CRIME

Where there are eye witnesses to the crime

When the investigator arrives at the scene of the alleged crime, he should immediately ascertain whether the victim is dead and also determine whether the body of the victim or any movable object in its vicinity has been moved since the body was discovered. If there was a moving of the body, he should immediately interrogate the mover as to its position upon discovery. This information should be secured while the positions and facts are fresh in the memory of the mover. For the purpose of questioning by the investigator, all persons near the scene of the crime, especially those who were eye witnesses, should be prevented from leaving the premises.

Where there are witnesses who can give positive testimony as to the cause of death, it will be an easy task for him to determine whether or not the deceased died because of suicide, accident, naturally, or by criminal intent. In questioning a witness, the investi-

gator should not be satisfied with the conclusion drawn by such witness but he should demand the facts upon which such conclusion was based. The witness' statement that "It was an accident" is not sufficient. How does he know it was an accident?

The answers to the following questions must be secured from the witness, where it is claimed that the victim was murdered.

Who committed the crime?

What is his description and where could he be found?

What time did the crime take place?

If it was dark, how did the witness identify the assailant?

What was the motive in committing the crime?

How did assailant arrive at the scene of the crime?

How did he leave?

Where is the instrument used in the crime?

What was said by either the assailant or victim before the crime was committed?

What did assailant say after he committed the crime?

Was assailant acting and speaking in a normal and intelligent manner?

What was the witness doing at the scene of the crime at the time the victim was murdered?

The answers should be noted in the investigator's book for future use. Each statement should be checked up where possible. This can be done by following the leads and suggestions of the witness as he relates his story. Later the same witness should be interrogated again. His answers should correspond to the ones given at the prior examination. Chapter V is devoted to the questioning of witnesses and how to tell when the witness is giving false testimony.

When the homicide is committed in the night and the witness claims that he recognized the assailant from the flash of his gun or because of the moonlight or starlight, such evidence is not to be relied upon, for it has been shown by experiment that recognition by moonlight can only take place within about seventeen yards and in the starlight only at about thirteen feet. To recognize one by the flash of his gun the witness would have to be looking in the direction of the flash. If he was not looking in that direction, recognition could not have taken place and the statement of the witness should not be taken seriously. The investigator should ascertain the reason why the witness was accusing another of the crime upon such flimsy evidence. It has been held in many jurisdictions that the accusing of an innocent person is indicative of the accuser's guilt: *Com. v. Bishop, 285 Pa. 49.*

There are many cases on record where weapons, forged fingerprints, or hair of innocent persons were placed at the scene of the crime to divert suspicion from the real perpetrator.

The murderer, in many instances, has been identified by a witness by the sound of accused's voice, a gold tooth, the size and shape of his nose, and many other peculiarities. Eric R. Watson in his book, the *"Trial of Adolf Beck"* cites seventeen cases of mistaken identities and shows how Beck was found guilty of a crime three different times and finally set free because of the convincing argument made by his attorney showing how he was mistaken for another.

To warrant the conviction of the accused, as the person who had committed the crime, the evidence must identify the accused as the person, and it is sufficient that the witness believe that defendant committed the crime: *Com. v. Cunningham, 104 Mass. 545.* And the identity of the accused may be established by circumstantial evidence which leads to a fair and reasonable conclusion that defendant, to the exclusion of others, committed the crime. The identity can be established by the voice heard, finger prints, or footprints left at the scene of the crime.

Except in some jurisdictions, while a witness will not be permitted to state his belief, opinion or conclusion that certain tracks were made by accused or

by the accused's horse, or that they could have been made by a certain person or animal, he may state facts within his personal observation, such as the result of measurement, or observation, or comparison of different tracks and footwear; and may describe the tracks by stating that they appeared to have been made, as the case may be, by a person or an animal, walking or running in a particular direction: *16 C. J. 1550.*

The reader is referred to Chapter IV in which identification is more minutely described.

Where there are no eye witnesses to the crime

Wounds

Where death occurs as a result of a wound, the question of the cause of the wounding must be first answered. Was it accidental, suicidal, or homicidal? The situation and the direction of the wound usually will answer this question. Suicide wounds are usually directed to a vital organ in the body and the body of deceased will usually bear powder and burn marks when gun shot is used. The weapon is always close at hand and the wound will be in a spot easily accessible to the movement of deceased's hands.

Accidental wounds also have the distinctive qualities of sucidal wounds, but the weapon is usually situated so as to indicate that it was pointing towards deceased, or that it had caught on some object, or is close to the deceased's body.

In suicide, there is strong evidence of the intent of the deceased so to do, which is missing in accidental wounds. One who contemplates suicide usually leaves a note telling why he has done so or will leave some evidence of his intent. A wound in the back would not be indicative of suicide because it would be impossible for the deceased to reach a position to inflict such a wound. On the contrary, such a wound would indicate that it was inflicted accidentally or with homicidal intent. Wounds from a blunt instrument are seldom inflicted by one attempting suicide. One with suicidal intent will use an instrument that will cause death speedily. Of course, there are exceptional cases recorded where one has attempted suicide with a blunt instrument. It is known that maniacs will inflict wounds upon themselves of an extraordinary nature which will usually mislead the investigator to conclude death to have been caused by homicide.

Gunshot wounds

There are many different kinds of fire arms used in this country. We have the Enfield and Springfield rifles, the sporting rifle, the shot gun, revolvers and pistols, and automatic rifles and pistols. The bullet of the modern rifle or pistol will usually penetrate the victim's body and it is less likely to deflect than the bullet of the old fashioned musket and gun.

The modern bullet, when shot at right angles to

the victim, will leave a hole at its entrance about the same size as the bullet and the edges of the wound will be forced in. The bullet that enters the victim's body and lodges is said to have penetrated, and the bullet that enters and leaves the body is said to perforate. The exit wound will be larger and the edges will be everted. A case is cited in the Journal of the American Medical Association for May, 1931, where three wounds were inflicted by one bullet. The bullet entered and left the body of the victim and re-entered after rebounding from a wall. This is an unusual case. When the bullet is not fired at right angles to the victim, it usually will be deflected in the body.

In hunting rifles, the bullet that is used contains a large charge of powder and the missle is soft, thereby inflicting a tearing wound.

A shot gun will inflict a wound according to the size and number of the shot used, and its closeness to the person fired upon. When the gunner is close to the victim, all the shot will be in the body (and not scattered where the gun has a choke bore), and there will be powder marks (called tattooing). When smokeless powder is used, the burns around the wound will be the same as that from black powder but the smudge will be of an orange color and there will be no tattooing.

A revolver bullet fired at right angles to the victim

at a distance of about ten feet will cause the entrance wound to be smaller than the bullet because of the elasticity of the skin. A mere inspection of the wound will not disclose the calibre of the gun used. And when the gun is fired at an acute angle to the victim, the entrance wound will be oval in shape and not round: *Da Costa, Modern Surgery.*

It should be remembered that the exit wound never has any burn or powder marks. This wound is always larger than the bullet and, as stated before, the edges are everted. Revolver bullets striking the victim's head will usually glance off and cause a fracture.

Knife wounds

Knife wounds are usually set down as presumptive of suicide, although one may commit murder this way for concealment. The circumstances will usually lead to detection. The depth and direction of the wound will help the investigator to arrive at a safe conclusion as to the cause of death. Stab wounds are usually narrow and deep and, where it penetrates a large blood vessel, it will cause death rapidly. It is to be borne in mind that where one usually performs his work with his right hand, and the wound was made with his left hand, that is, the slash in the throat showing that it went from right to left, it is indicative of homicidal intent. A stab wound in the deceased who had committed suicide will be downward and away

from the hand he was using. The investigator should beware of the natural conclusions he will draw from the direction of the wound, until he has evidence to prove that the victim was not ambidextrous.

When the wound was inflicted by a knife stab, the investigator should take note of its direction, depth, and width. These measurements should be compared with those of the instrument used in the crime. It is a known fact that the wound will sometimes be deeper in the body of the deceased when it is inflicted in the soft fleshy part. The pressure and the force of the blow will force in the soft flesh, and when the blade is withdrawn, the muscle tissue will return to its normal position. This will account for the depth of the wound being of a larger dimension than the length of the knife blade.

Position of deceased at the time of infliction of wound

Was the deceased standing, sitting, or lying down when he received the wound? If the deceased was standing, and the murderer was standing also, the wound inflicted would be crosswise. This is especially so when the wound is from gun shot. If the deceased was sitting and the murderer standing, the wound would be in a downward direction. Where the throat was slashed and the blood had run down the fore part of deceased's person, it is probable that the wound was inflicted while standing or sitting. If the de-

ceased was lying down, the wound will be very oblique when inflicted in the body.

Was death caused by the wound inflicted?

Death sometimes results from natural causes although deceased may have been wounded prior to death. This phase of the case is for the medical examiner. He should be able, after the autopsy is made, to give an opinion as to the cause of death. Where the victim was wounded several times, the medical examiner should be able to say which of these wounds was the cause of death. This is important where different calibre guns are used by two men and each one denies that his shot was the cause of death.

The escape of large quantities of blood from the wound is a positive sign that the wound was inflicted before death. For eight or ten hours after the infliction of the mortal wound, its edges will remain bloody, and then begin to swell. After a period of five days, pus will form in the wound, and after another seven days, the edges of the wound will begin to unite, leaving an ordinary wound of small depth. From the facts cited, it can be seen that where one is found dead from wounding in which pus has formed therein, the investigator may safely conclude that the mortal wound was inflicted within the last five days. The medical examiner's opinion should be sought to verify this conclusion. His opinion should also be received

as to whether or not the weapon found on the scene of the crime was the one or is similar to the one which inflicted the fatal wound.

The investigator should not rely on his memory. He should take notes of every fact found and stated.

After the photographers have taken their pictures and the fingerprint men have gone over the premises thoroughly, the body of the deceased should be sent to the morgue or other place designated by the proper authorities where a post mortem should be made. Inasmuch, as the findings therefrom only concern the medical examiner, they will not be discussed in this book.

Blood

Blood stains should be sought and their closeness to the body noted. Fresh blood stains can be easily identified. The physical characteristics of blood soon change, and a lapse of time will make it difficult for the ordinary detective to form an opinion. When the blood stain is on a white background it will be a deep red in color. This will change usually to a reddish brown within twenty-six hours. When the stains are on cloth, the whole cloth, where possible, should be sent to the analytical chemist for analysis and opinion. And when the blood stain is on a weapon, the investigator should not attempt to form an opinion but should send the weapon to the chemist for analysis. There

are many instances recorded where one was accused of committing a crime because he had in his possession a knife with a stain upon it which a layman thought was blood, but, in reality it was rust from the cutting of a lemon.

Many investigators have been misled by the spreading of animal blood at or near the scene of the crime, or by the finding of a shirt stained red. Animal blood cannot be differentiated from human blood even by the expert until he has subjected the blood to the proper tests. Many red stains upon shirts of suspects were found to be rust or red paint or dyes upon analysis.

Blood is soluble in water, while red dyes, iron moulds and paints are insoluble in water. It is a mistaken theory among laymen, especially those who desire to rid themselves of the tell-tale marks of crime, that blood stains are more easily effaced by using potash, soda or other chemicals. It has been found by experiment that cold water with a little rubbing will efface blood stains quickly, and not leave a brown stain, as will happen when potash or soda is used.

CHAPTER II

INVESTIGATION OF POISON CASES

Generally

Poison, as defined by Black in his Law Dictionary, is "a substance which, on being applied to the human body, internally or externally, is capable of destroying the action of the vital functions, or of placing the solids and fluids in such a state as to prevent the continuance of life."

The detective, perforce, will investigate many poison cases while he is in active service and, therefore, he should be familiar with their actions on the human body. It is not necessary that he should become expert in this line for he will have the help of the medical examiner. But he should know what the symptoms of poisoning are; what amount of a certain poison is fatal; and within what time it would cause death. When he learns this, he will be in a position to know what to look for as evidence and he may be able to detect the criminal before the latter has the chance to escape.

Inasmuch as the symptoms of poisoning appear soon after a meal or liquid is taken, the investigator should see to it that nothing in the line of food, drink, or medicine is touched by anyone. When the victim

shows the signs of poisoning, the investigator can safely say that the victim had taken the poison about one-half hour before the first symptoms appeared. The time of the occurrence of the first symptoms, will help the investigator in forming an opinion as to what medium was used in conveying the poison.

Poisons may be introduced into the body through the mouth, rectum, vagina, lungs, and under the skin. And it also known that one may die from the shock alone. Poisons do not act in the same manner on different persons when it is taken in the same amounts. The mental condition, physical condition, and prior habits as to the use of the drug or poison, must always be taken into account.

Proof of the presence of poison must be secured by the investigator. One of the best proofs of poisoning is the discovery of poison by chemical analysis of the foods or drinks, or of the contents of the victim's stomach which should be analyzed after the post mortem examination. Where the poison administered is of the vegetable or animal class, for which no positive chemical tests are known, a physiological test will have to be made by the medical examiner to secure proof that it is poison.

After the medical examiner has seen the deceased and diagnosed the cause of death to be poisoning, the investigator should immediately ascertain what was

eaten or drunk by deceased at the time fixed as to the taking of the poison. Where many hours have passed since the partaking of a meal by the deceased, food can be eliminated as the medium used in conveying the poison.

Vomiting is an important sign in poisoning. It should not be disturbed, but should be left for the medical examiner who may wish to have a specimen for analysis. When the front of deceased is covered with the vomit, it may be deduced that he was sitting or standing immediately before it had occurred: See *Taylor, Med. Juris.*

As soon as the body of the victim cools it will become rigid, and if he was grasping anything at the time of the taking of the poison, his hand will be tightly gripped around it. A criminal will sometimes attempt to conceal the crime by placing the container of the poison in the victim's hands. When this is done after the body has begun to cool, the investigator will find that the fingers of the deceased do not tightly grip the container.

The daily newspapers are filled with stories of people committing suicide by taking poison. In cases of this kind, the investigator will learn that the deceased, prior to the time of the taking of the poison, evinced an intention to take his own life and the evidence about him will point in that direction. One

who intends self-destruction will select the poison which will kill instantly.

Medical authorities divide poisons into three classes, viz., corrosive, irritant and neurotic.

CORROSIVE POISONS

Corrosive poisons have immediate action and in many cases death comes from shock and suffocation. They most always induce vomiting and cause the passages with which it comes into contact to become inflamed.

Sulphuric acid

It is sometimes called *oil of vitriol*, and is not always used as a poison. In many instances it has been thrown upon the victim to disfigure him: *People v Day, 199 Cal. 78.* When taken internally, it leaves brown stains on the lips and mouth, and, when it comes into contact with clothes, it will stain them. The victim, if seen alive, will complain of pain in the stomach followed by vomiting. Three drahms is a fatal dose and death will come in about twelve hours.

Nitric acid

Two drahms of this acid will kill in about twelve hours. The symptoms are vomiting; the latter a yel-

low or brown color, and it will immediately appear after the taking.

Hydrochloric acid

This acid sometimes called *muriatic acid*, causes immediate pain in the stomach; vomiting of blood and mucous; and death will come within eighteen hours.

Oxalic acid

It is a corrosive, vegetable acid, frequently used with sucidal intent. It resembles epsom salts and a lethal dose of one-half ounce would cause death in about one hour. There are some cases where death did not take place for twenty-four hours. The symptoms are vomiting of bloody matter; the countenance is livid, and convulsions will occur before death.

Carbolic acid

This is a corrosive, organic poison, and is commonly used by persons contemplating suicide. It causes pain in the region of the stomach; coma will ensue, and the pupils of the eyes will contract. One-half teaspoonful will be fatal and death will come in a few hours.

IRRITANT POISONS

Irritant poisons usually cause pain in the region of the stomach; nausea; and evacuations with blood. The pulse of the victim will become feeble; the skin

cold; convulsions will set in and the victim will have all the symptoms of cholera, colic and diarrhea.

Iodine

Iodine will cause vomiting and purging, but it will take a very large dose to be fatal. It has been used by persons attempting to commit suicide, who usually failed in the attempt.

Arsenic

Arsenic is the most frequent and deadliest of poisons used by the criminal. It is tasteless and is suspended in coffee and soup. A few grains are usually fatal and death will occur in two or three hours. Symptoms usually appear within a half hour after taking which is followed by vomiting and diarrhea. Coma will set in, and sometimes, tetanus. The poison itself is usually eliminated from the system: See *Com. v. Danz, 211 Pa., 507.*

The finding of traces of arsenic poisoning in the body of the deceased is not conclusive of intentional homicide. Where one is being treated by a physician who prescribes arsenic in the medicine and this is taken for some time prior to death, traces of arsenic will be found in the deceased but it should not be greater than what had been prescribed by the physician. It is a known fact that arsenic will accumulate in the body, especially when administered in small doses at regular intervals, which will finally prove fatal.

Bichloride of Mercury

Bichloride of mercury is a powerful poison, eight grains of which is a lethal dose; death occurring in about two days. Its symptoms occur immediately. Nausea, vomiting, and diarrhea take place, followed by coma and convulsions.

NEUROTIC POISONS

Laudanum

This poison is fatal when the dose is about one-half of an ounce. The person taking it will succumb within twelve hours.

Strychnine

Strychnine is an alkaloid used to destroy vermin. When taken internally, it brings on convulsions and tetanus. Half a grain of the sulphate has proved fatal in about ten minutes. The limbs of the victim become rigid and the head is usually thrown back.

Curare

This is an active poison when injected under the skin. It paralyzes the motor nerves, slows the heart action, stops breathing, and induces suffocation.

Prussic acid

Prussic Acid is a formidable poison because of its rapid action. It has the odor of bitter almonds. One grain is fatal; the symptoms will appear in about one

minute. They are: insensibility, dilated pupils, and convulsive breathing. Convulsions and death will follow in about five or ten minutes: See *People v. Benham, 160 N. Y. 402* for a case where this acid was used with homicidal intent.

Morphine

Morphine is a poison that is used frequently in taking the life of another. A very small dose may prove fatal. The symptoms will appear in about twenty to thirty minutes after the swallowing of the poison. The victim will appear as if he were in a deep sleep, and the pupils of his eyes will contract symmetrically to a pin point. Death will occur in about seven hours.

Belladonna

Another name for this posion is *atropine.* The symptoms of the taking of this poison will appear in about thirty minutes. Nausea will occur, followed by delirium and stupor with a dilation of the pupils of the eyes. Death will occur in about three to four hours.

In the celebrated trial of Dr. Buchanan, which is related by Mr. Wellman in his work on *"The Art of Cross-Examination,"* it was revealed that both morphine and atropine were used by the acused in killing his wife. In this case the pupil of one eye of the victim was contracted to a pin point and the pupil of the other eye was dilated.

CHAPTER III

DROWNING, HANGING, AND STRANGULATION

Drowning

In drowning cases, the investigator should look for marks of violence on the body of the deceased. This in itself will not be conclusive that the deceased was dead before he was thrown into the water. He may have struck a shallow bottom or may have pounded against the shore before discovery. It will be the duty of the medical examiner to tell the investigator whether or not drowning was the cause of deceased's death. It is said that the absence of water in the stomach of deceased is a sign that he had died from drowning. This was found to be conjectural and it cannot be relied upon. Froth around the mouth and water with sand in stomach are true signs: *Herzog Med. Juris., 276.*

Hanging

Death from hanging is usually instantaneous, unless the rope was so placed around the neck as to leave a slight passage through which air was inhaled into the lungs. In that case death will not come so quickly. The face of deceased will be livid, the hands will be clenched, the tongue will be swollen and sometimes

bitten. There will also be bruise signs around the neck where the rope was placed. The medical examiner will tell the investigator that death came from asphyxiation caused by hanging.

The investigator should compare the width of the mark around the deceased's neck with the width of the rope that was found around it. From this fact it can be concluded that the rope was used in the hanging and that it was instrumental in causing death. There are cases recorded where one has been hung to conceal strangulation which had caused the death of the victim. Hanging is not always the result of intentional homicide. It may be from suicide and accident. From experiment it has been found that one could not commit suicide by hanging when his hands and feet are tied. Are there marks of violence on the body of deceased? Are there any signs of conflict near the scene of the hanging? The answer to these questions will enlighten the investigator as to whether or not the hanging was with suicidal intent or not.

When one is hung after death has occurred, the mark around the neck will not be visible and the facial expression will not be livid and swollen.

Strangulation

Strangulation is the same as hanging, as to its effect upon the body, except, that in hanging, the body is suspended; while in strangulation, the body was standing,

sitting, or lying down. It is a rare occurrence to hear of one strangling himself to commit suicide. The investigator may safely presume that where one dies from strangulation, it was done with homicidal intent, especially where the instrument used is missing.

CHAPTER IV
IDENTIFICATION

Dactyloscopy

Very seldom is it possible to secure a witness to a crime, who can say that he was on the scene at the time the mortal wound was inflicted, and could identify the culprit. As was said before, the perpetrator of a crime usually commits his act in the dark and in seclusion. Science will have to be resorted to, to bring the guilty person to justice. The felon usually leaves some physical evidence of his presence at the scene of the crime, such as, finger prints on the weapon, footprints in a freshly fallen snow, or he had involuntarily left in the grasp of the victim with whom he struggled, a piece of his cloth or some of his hair.

Dactyloscopy, or the science of identifying criminals through their finger prints, is now universal and is one of the surest methods of identification. The governments involved in the World War fingerprinted all the men in their service which, combined with the number of finger prints taken from criminals by the several police bureaus, make the identification of the criminal an easy matter.

There are four types of finger prints; viz., arches, loops, whorls and composites.

The ridges in the arches run from one side to the other and make no backward turn.

In loops, some of the ridges make a backward turn and there is usually one delta where they meet.

In whorls, some of the ridges make a turn through at least one complete circuit and there are usually two deltas.

Composites are a combination of the arch, loop and whorl.

The ridge characteristics are relied upon, in making the distinctions. A line is drawn from the centre of the print to the delta. The number of ridges that it intersects is a medium through which the print is identified and combined with the type of the print, it makes up a certain classification: See *Brayley, Finger Print Identification.*

When a person is fingerprinted the thumbs and fingers are impressed upon a card in their natural order: Right thumb, right index finger, right middle finger, right ring finger and right little finger. Under these are placed the impressions from the thumb and fingers of the left hand. And under both of these the fingers of each hand, without the thumb imprint are impressed.

Skin disease and injuries will blur a finger print. The finger should be allowed to heal before its impression is taken. Wounds and cuts will alter a finger print especially when a scar is left. Where the prints

of the accused were taken before the wounding, the expert still has the prints from the remaining fingers to make a comparison. The scar in the new print taken of the injured finger is of additional value for it will show up in the impression.

To bring out finger prints on glass, insert some dark material in the glass to make a background or dust some "pay powder" (mercury of chalk) over the finger print which will bring out the print after the excess powder is brushed off. This is usually done to finger prints before photographing. Graphite should be used on a finger print which is on a white surface. This will bring it out more clearly.

Expert testimony, as to the identity of fingerprints, is admissible in evidence. The testimony of a layman, not expert in the science of fingerprinting, or the imprints of a knee, or a bare footprint, may describe the prints he has seen but he cannot give his opinion or judgment relative thereto: *16 C. J. 1550.*

The expert, to qualify, must be familiar with the systems of classification recognized in the profession, and the prints in question must have distinct marks and must be numerous enough to afford an inference; and if reproduced or transferred, the process used must be reliable and in common use in such investigation: *Com. v. Albright, 101 Pa. Supr. 317.*

There are three cases on record, in which the con-

victions were sustained, where there was no evidence of identification beyond the fingerprint impressions: *In Re Castleton, 3 Crim. App. Rep. (Cohen) 74*, where the fingerprints were found on a candle; *State v. Connors, 94 Atl. 812 (N. J. L.)*, where the fingerprints found on a column of the balcony of the house entered were the same as defendants; and in *Parker v. The King, 14 C. R. L. (Australia) 681, 3 British Ruling Cases 68*, the only evidence of identity against Parker depended on a comparison of fingerprints found on a bottle: See *Com. v. Albright, 101 Pa. Supr. 317*, for a review of these cases.

In the Albright case, *supra*, the defendant's conviction was sustained by the appellate court even though there was but little evidence beyond the fingerprint impressions.

"In *McGarry v. State, 200 S. W. 527 (Texas)*, the evidence of fingerprint impressions was held to be admissible, but the conviction was not sustained, because the fingerprints were on a window pane, so situated as to be innocently accessible to the public, and there were other prints on the pane besides the defendant's, and it was not practicable to tell when those were made, and those claimed to have been made by defendant were placed on the window. Defendant's fingerprint was, therefore, held not to be inconsistent with his innocence; and not to fulfill the legal measure of circumstantial evidence": *Com. v. Albright, Supra.*

In the same case, the appellant raised the question that more than one person may have the same fingerprints and, again, fingerprints can be forged. The court held: "In a book cited by appellant, 'Fingerprints Can Be Forged,' by Albert Wehde and John Nicholas Beffel, the authors contend that by a process of etching on metal a fingerprint can be placed on a surface which the person, whose finger mark it is, never touched; in other words, that a fingerprint thus made, or 'forged' as they call it, can be 'planted' to secure an innocent person's conviction; but the book does not seriously question the individuality of each person's finger marks. It requires for the process the obtaining of a genuine fingerprint impression of the person whose print is to be made, and admits the impossibility of 'forging' the fingerprint without such genuine impression. Whether the impression on the incriminating article was genuine, or 'planted' in this manner, would be a question of fact for the jury, depending on the circumstances surrounding the obtaining of the article": Citing *In Re Castleton, 3 Crim. App. Rep. (Cohen) 74; People v. Roach, 215 N. Y. 592; People v. Jennings, 252 Ill. 534; Moon v. State, 198 Pac. 288 (Ariz.).* In this particular case they were conclusive against any such "plant" or "forgery"; *Com. v. Albright, Supra.*

See Chapter IX on Evidence Pertaining to Homicide, where the admissibility of mechanisms in evidence is discussed.

The investigator will find that the study of finger prints will aid him in identifying the criminal by learning to pick out the peculiarities in the imprints left by him. The finger print expert of the bureau will be able to tell him whether or not the person who left his imprint at the scene of the murder was ever convicted of crime.

Weapons

Where a rifle or revolver was used in committing the crime, the calibre of the arm itself can be identified by the bullet which was fired. The bullet may be found in the body of the deceased upon making an autopsy or it may have imbedded itself in the floor or wall of the room after perforating the deceased. In the latter case it should be pried loose and examined. It is a known fact that a 32 calibre revolver can only fire a 32 calibre bullet. If the gun used is rifled, the bullet will receive marks from the rifling. And when the barrel of the gun is not smooth it may leave a telltale nick in the bullet. The imprint of the bullet should be taken by rolling the bullet on its side after it had been smeared with printers ink. The imprint will show up its peculiarities. When the barrel is rusty, the bullet in passing, may pick up some of the rust.

The make of the bullet may be of help to the investigator. The empty shell of the bullet fired should be looked for at or near the scene of the crime. If an

automatic gun was used the empty shell will be found at or near the body unless it was picked up by the criminal before leaving.

Where a stab wound is inflicted on the victim and was the cause of death, the width and depth of the wound will give the approximate dimensions of the blade. The size of the blade may be slightly smaller than that of the wound, especially when the criminal drives the blade into the victim with force and turns it to make the wound larger.

Hair

It will be very difficult for the investigator to say offhand that hair found at the scene of the crime is from a human being and that it is the same kind as the specimen taken from the accused's head. Human hair and animal hair cannot be told apart with the naked eye. But it can be shown that the color of the hair found in the hand of deceased is the same as that of the accused's. And when the hair has been found to be bleached and the accused's hair also has been bleached and the same bleaching was used, as will be found under proper test, the investigator can safely conclude that the accused was at the scene of the crime before the victim died.

In bleaching hair, peroxide of hydrogen will change the hair to a golden tint. A solution of sulphide of potassium followed by a solution of nitrate of silver

will dye the hair to a very dark shade of black. The stronger the solution, the darker the hair will become.

If lead was used in the dye, boiling it in a solution of diluted nitric acid will change its color and bring out the lead. Silver will be detected by the use of hydrochloric acid or chlorine water with a little ammonia solution added thereto.

The investigator should be able to say whether the hair found at the scene of the crime had fallen out of the head naturally, or was pulled out, or was cut. To determine this, he should submit the hair found to an expert who will examine it microscopically. When the root ends of the hair, upon examination, are found to be straight across, it can be taken as true, that they were cut from the head. When the ends of the hair are found to be convex in shape it can be deduced that they had fallen out naturally from the head. And when the ends are found to be concave, the investigator may infer that the hair was pulled out of the head: *Herzog, Med. Juris., 1130.*

Inks and writings

When the investigator finds letters and notes at the scene of the crime, he should examine them for any motive which one may have had in taking the life of the deceased. They may also disclose the names and addresses of his friends who may be able to give the investigator information which will lead to the detec-

tion of the criminal. Letters have been altered and forged to throw suspicion on an innocent person. As is said in Chapter IX in which real cases on homicide evidence are digested, the signature on a letter is not always sufficient to identify the letter.

The comparison of writings is of valuable aid to the investigator when there are letters or notes found that incriminate one in the commission of a crime. This is usually in the field of the writing expert who should be able to say whether or not, after he has made a comparison of the letter in question and the specimen submitted by the accused, the accused was the author of the missive: See *Com. v. Smith, 6 S. & R. (Pa.) 568.*

When there are misspelt words in the letter, those words, among many others, should be written by the accused in the presence of others. The misspelling of those same words is indicative of his authorship of the letter.

Many times the investigator cannot secure a specimen of accused's handwriting. He should then seek a specimen of the ink he uses in his fountain pen or in his ink well at home. If he is successful in this and the specimen secured, when tested with the reagents, disclosed the distinctive characteristics which was also disclosed by the ink in the incriminating letter, the investigator can safely conclude that the accused was the writer of the letter.

Black writing inks are not all alike. Some are made from ferrous sulphate, or nutgalls, or tannins. Iron filings are sometimes added to the preparation. In the United States the inks mostly used are the iron nutgalls, logwood and nigrosene.

Iron nutgall ink is of a bluish tint which will later turn to a black shade. The ink will penetrate the fibre of the paper upon which it is used and will coat the pen and corrode it if not dried after using.

Logwood ink is a purple black ink. Acetic acid is usually added to logwood inks which contain potassium chromate, to prevent the formation of sediment. This ink is not washable and it will not smear on a damp day.

Nigrosene ink is a blue black ink, sometimes purple black, which will not turn a darker shade like the iron nutgall ink. Dampness affects it and when it does become damp, it will smear over the paper. It can also be washed away with water. It forms no sediment and is mostly used in fountain pens, and will not corrode pens.

Red ink is usually made from Brazilwood. Aniline dyes are now being used to make ink red.

Blue ink is usually composed of oxalic acid, water and bluing. Paris blue and alcohol make a good blue ink.

India inks are used mostly by draughtsmen. This ink imbeds itself in the fibre of the paper and cannot be effaced with chemicals like the other inks mentioned. India ink is seldom used in the writing of letters because of its slow running qualities caused by its thickness. In *Com. v. Hilton, 74 Pa., Supr. 20,* it was shown that black ink will be darker than purple ink when photographed.

The composition of inks is easily determined by the application of reagents. Both the specimen secured and the letter in question should be subjected to the test of these chemicals. And when both react the same way, that is, turn to the same color, then it can be safely said that both inks are of the same class.

C. Ainsworth Mitchell, in his book, *"Inks, Their Composition and Manufacture,"* sets forth a list of reagents which are used in these tests. They are hydrochloric acid, oxalic acid, bleaching powder (saturated solution), bromine (saturated aqueous solution), stannous chloride, nascent hydrogen, titanous chloride and potassium ferrocyanide.

Testing each word in a letter or document, it can be determined whether or not the writing was altered by adding a letter or word.

A writing done in blue black ink, when treated with acetic acid, will not diffuse easily after two or three years. If the writing is fresh and is treated by

oxalic acid there will be an immediate smudge, but there will be none at all if the writing is two to four years old.

A case is reported where one was convicted of murder because he could not explain why three different inks were used in the drawing of a will when only one bottle of ink was found at the place where the will was so drawn. The altered will made in favor of the accused was produced as the motive for the crime.

The so-called synthetic inks, are inks which give a writing that is invisible, or nearly so; until it has been acted upon by the air or treated with a special reagent. They have been put to many clever uses by the criminal.

A disappearing ink is a weak solution of starch containing a slight trace of codine which will produce a faint blue color. On exposure to the air the writing will soon disappear. Quinoline blue is sometimes used in the preparation of disappearing ink.

Invisible ink is made up of the solution of silver nitrate and ammonia which gradually becomes black when exposed to the air. The best known sympathetic inks consist of solutions of cobalt salts which will become visible upon the application of heat. There are other compounds, such as tannin, which will form ordinary ink on the addition of iron sulphate;

cobalt nitrate which turns blue on adding oxalic acid; and gold chloride which will give a purple color with tin chloride.

Where the suspected missive is typewritten, the make of the machine can be determined from the characteristics of the letters and figures. Different makes of typewriters imprint different sized and shaped letters and figures. The angular letters, such as, the "A," "K," "M," "N," "V," "W," "X," "Y," and "Z," when tested by the degrees of each angle formed will disclose whether a word which is suspected of being added to the letter was typed on the same machine as the rest of the letter.

CHAPTER V

QUESTIONING THE WITNESSES

The investigator, having arrived at the conclusion that death occurred with homicidal intent, is now ready to seek the criminal who perpetrated the crime. This information can be secured by the questioning of the witnesses who were seen at the scene of the crime or from the physical facts or evidence left by the criminal himself. Where there are eye witnesses to the commission of the crime, their testimony is called positive testimony, and is the best evidence at the time of the trial. But where the evidence identifying the criminal is built up from circumstances surrounding the scene of the crime which inferentially proves that he committed the crime, this is called circumstantial evidence and is usually given the same weight as positive evidence. Then again, the criminal can be identified from the ante-mortem statement received from the victim before death and, finally, from the admissions and confessions of the criminal himself.

The witnesses are the only ones who are in a position to help the investigator secure the evidence necessary to detect the guilty party. Will these witnesses help him or put obstacles in his path? As old as the history of crime is, man has hidden his knowledge and his memories by silence and by lies. Investigation is an art, which has been mastered by few. There are

some men who are expert in reading the signs around the deceased but when it comes to making a silent man divulge information or show the lying witness that he has been caught in an attempt to conceal the real facts, it will take all the ingenuity of the expert, to bring this about. They say that one must be a born detective to do this, which may be true. There are instances where one without training in this field has shown success by thoroughly studying the methods of other successful investigators.

Because of the light his experiments throw upon this subject, reference is made to the admirable work by Dr. Hugo Münsterberg, entitled *"On the Witness Stand."* In the section devoted to the detection of crime he states, in substance, that the infliction of pain and torture were used to force the confession of truth from the suspect. It seems that "the infliction of mental and physical pain has always seemed the quickest way to untie the tongue and to force the confession of truth . . . . and usually the accusing of an innocent person. There are no longer any torture chambers with their infamous devices but, still, there are a class of police who still practice what is termed the 'third degree' and make the life of the suspect miserable." Decency abhors this form of barbarism and the courts will not allow a confession made under duress and fear to be admitted in evidence. See *Snook v. State, 34 Ohio App. 60.* Even the confession made

under the hope of gain will not be admitted as evidence.

The modern investigator must be as efficient as a lawyer in securing the necessary information from his witnesses. He should be courteous and friendly to the witness to dispel the usual fear man has for the officer of the law who is questioning him. Let him tell his story in his own way, taking all the time he wants. The more he will speak, the sooner will he disclose the weak points in his testimony if he is attempting to conceal anything.

After he has told his story and the investigator believes the witness is hiding some important fact from him, he should cross-examine him and attempt to bring it out. In this, he will not be handicapped like the attorney in the court room where the rules of the admissibility of evidence control his questions. Make the witness repeat his story once more. One must have a reason to conceal a vital fact from an officer of the law who is trying to uncover a criminal. Otherwise, why the suppression of the vital fact? The usual method used by this class of persons is to memorize a set of facts to take care of the time or occurrence concealed. Watch his facial expression while he is repeating his story. Note, whether or not, he is using the same words and phrases he had used when he told the story the first time. If he does, it is a sure sign of preparation and memorizing. If

necessary, make him repeat it once more. Compare it with the prior ones. By this time, it will be known whether he had concocted the story.

There is a prominent attorney admitted to the Philadelphia Bar, who, when confronted by a memorized story from a witness, will bring out the truth in the following manner:

The witness is questioned on some other topic, usually, his memory or life. This line of interrogation is sometimes followed for nearly an hour, when the witness is suddenly asked to tell his story once more. After he has repeated it, he is told that it has been noted from his answers to prior questions that he had said this and that. "Would he be so kind and repeat that part once more as it will be needed at the coroner's inquest?" He will repeat it. If he makes the change as you have suggested, you have caught him lying. Tell him so. Threaten him with arrest unless he will tell the truth. Fire your questions at him quickly. Do not give him time to think. He will then tell you the truth. If he gets angry, he may forget himself and tell the truth.

The modern investigator should give as much time as possible to the court room. There he should watch the district attorney and other attorneys bring out facts from recalcitrant witnesses. Imitate their methods and manner in questioning witnesses.

Francis L. Wellman, Esq., in his excellent work on "*The Art of Cross-Examination*" says the following about that art:

"It requires the greatest ingenuity; a habit of logical thought; clearness of perception in general; infinite patience and self-control; power to read men's minds intuitively; to judge of their characters by their faces; to appreciate their motives; ability to act with force and precision; a masterful knowledge of the subject-matter itself; an extreme caution; and, above all, *the instinct to discover the weak point* in the witness under examination."

There are many books telling one how to detect crime. Most of them are based on psychological theories. For the past half century the theory of associated ideas has come into prominence in the seeking out of the criminal. The suspect is required, in this theory, to speak out the first association that comes to his mind as soon as he hears the word spoken by the questioner. Unless he is guilty, he will not object to being questioned. The time taken in answering each question is an important factor in arriving at the decision whether or not the suspect is telling the truth. If he takes time to answer, he is not speaking the first word that comes to his mind. And when this is done after the questioner has spoken a word given to elicit an incriminating answer, it can be assumed that the answer given was substituted for the suspicious one.

The investigator should make a study of this remarkable theory and try to apply it to some concrete cases.

Dying declarations

When the victim, before his death, gives a statement to the investigator, the latter must ascertain whether or not the victim believes he is about to die. If he has hope of recovery, although his doctor expresses none, the statement will not be admitted in evidence at the time of the trial. On the other hand, if the victim believes that he is about to die although his physician believes that he will recover, his declaration will be admitted in evidence: *Com. v. Flori, 300 Pa. 125; State v. Caldwell, 115, N. C. 794.* Of course death must actually ensue.

In the case of *Com. v. Puntario, 271 Pa. 501,* it was held that dying declarations can only be received in evidence when the deceased made his statement under the belief that he was about to die. See *Carmichael v. State, 179 Ala. 185.* And this may be inferred from the nature of the wound without any express declaration to show that he was sensible of impending death.

This rule is the same whether these declarations are made for or against the accused: *Com. v. Bednorciki, 264 Pa. 124;* see *U. S. v. Taylor, 4 Cranch C. C. 338.*

In another case it was held that, such declarations

are inadmissible unless at the time the declarant made them he was in actual danger of death; unless he believed that death was impending, not distant; and unless death actually ensued. All these requisites must exist and it must be made under a sense of impending death. It is not necessary that they should be stated at the time to be so made. It is enough, if it satisfactorily appears, in any mode, that they were made under that sanction, whether it be directly proved, by the express language of the declarant, or be inferred from his evident danger, or the opinions of the medical or other attendants stated to him, or from his conduct, or other circumstances of the case, all of which are resorted to in order to ascertain the state of the declarant's mind: *Com. v. Lockett, 291 Pa. 319;* see *Kilpatrick v. Com., 31 Pa. 198; Com. v. Latampa, 226 Pa. 23.*

Where the declarant lingers between life and death for ten days after making the declaration, it was held to be of no significance: *Com. v. Lockett, Supra;* see *State v. Brown, 111 La. 696; People v. Falletto, 202 N. Y. 494; Martin v. State, 196 Ala. 584.*

The dying declaration of a husband against his wife or the wife against her husband is competent evidence against the other to show the other's guilt: *Wharton, Crim. Law, 676,* citing *Moore v. State, 12 Ala. 764.*

Confessions

Confessions are not admissible if they were made under threat, promise or encouragement of hope or favor: *State v. Phelps, 11 Vt. 116; Stephens v. State, 11 Ga. 225; State v. Harman, 3 Harr. (Del.) 567;* but the threats or promises must be connected with the confession to make it inadmissible: *State v. Potter, 18 Conn. 166.*

Parol proof of a confession is admissible but this may be nullified by the defendant by producing evidence to show that he had signed a statement: *State v. Johnson, 5 Harr. (Del.) 507.*

Confessions are admissible in evidence even when made in answer to leading questions: *Carrol v. State, 23 Ala. 28.*

After the investigator has secured all his evidence which is consistent with a felonious killing, a confession from the accused would be received in evidence although there was a possibility that the deceased committed suicide. This would be allowed at the trial: *Com. v. Bishop, 285 Pa. 49.* It is the manner and circumstances under which a confession is procured, not the person to whom it is made, that determines its admissibility: *Com. v. Cavalier, 284 Pa. 311.*

The confession of a person will not be received in evidence where it can be shown that he was so mentally

deficient that he did not know what he was doing, or that he did not realize the nature or appreciate the consequences of the act he was committing. The confession of a boy fourteen years of age was properly admitted in evidence in the case of *Com. v. Cavalier, Supra.*

It is the custom to put prisoners on their guard by proper warnings before obtaining confessions from them, and this accounts for the evidence of such procedure appearing in the reports of so many cases; but, these admonitions are, in most instances, largely for the purpose of making evidence in advance, so as to be able to prove that the confessions were voluntary, if any question on that point should afterwards arise. The fact of the voluntary nature of a confession can be established, however, by other evidence, vis., (a) by circumstances attending the occasion of defendant's declarations, (b) by the defendant's tacit admission, made at the trial, as to the voluntary character of the talk between him and that witness: *Com. v. Dilworth, 289 Pa. 498.*

A confession to a constable, as well as to a private person, must be unattended with any inducement of hope or fear, and it must not be founded on a question calculated to entrap the prisoner: *Com. v. Dilworth, Supra;* see *Com. v. Epps, 193 Pa. 512; Fife v. Com., 29 Pa. 429; Com. v. Cavalier, 284 Pa. 311.*

It was held that the following heading of a confession asserted its voluntary character: "And knowing that it may be used for me or against." The court held that the words "for me" did not indicate a hope for gain and, therefore, was voluntary: *Com. v. Bishop, 285 Pa. 49; Roesel v. State, 62 N. J. L. 216.*

A mere statement by an officer to the defendant that it would be better for him to tell the truth, does not invalidate the effect of the incriminating remarks which may be made: *Com. v. Spardute, 278 Pa. 37; Com. v. Weiss, 284 Pa. 105.*

Admissions

And where statements are made in the presence of the accused those statements cannot be used against him unless he acquiesced in them affirmatively or by his silence when he should have spoken. A negative sign is sufficient to deny: *Com. v. Mazarella, 279 Pa. 465; Com. v. Johnson, 213 Pa. 607.*

An admission, as applied to criminal cases, has been defined as a "statement by defendant of a fact or facts pertinent to the issues and tending, in connection with the proof of other facts or circumstances, to prove the guilt, . . . but which is, of itself, insufficient to authorize conviction; it is a circumstance which requires the aid of further testimony to generate a reasonable conclusion of guilt": *Com. v. Elliott, 292 Pa. 16.*

Voluntary statements made by a defendant, although they may not amount to a confession of guilt, can be used against him if they intend to explain the issues that are on trial: *Com. v. Tenbroeck, 265 Pa. 251; Com. v. Elliott, 292 Pa. 16.*

In *Com. v. Epps, 298 Pa. 377,* the court held that: "A confession is evidence only against the person who made it, and will not be admitted to affect others who participated in the crime. However, if made in the presence of the party to the criminal act, who failed to make any denial of the charge, it may be evidence against him as an admission: *Henry, Pennsylvania Trial Evidence, 121; Matchin v. Matchin, 6 Pa. 332; Fife v. Com., 29 Pa. 429; Com. v. Ashton, 227 Pa. 112* . . . . When the common enterprise is at an end, whether by accomplishment or abandonment, no one of the conspirators is permitted, by any subsequent act or declaration of his own, to affect the others. His confession, therefore, subsequently made, is not admissible in evidence, as such, against any, but himself: *Wharton, Crim. Evi., 10th Ed. 1435, 6; Heine v. Com., 91 Pa. 145; Com. v. Zuern, 16 Pa. Supr. 588* . . . "

From the above quotations which were extracted from actual cases, it can be seen that the investigator when he receives a confession from the accused, must not try to entrap the accused while questioning him or promise him immunity unless he has authority to do

so from his superiors. And when the confession is made under fear or duress, as is used by some policemen in their third degree, such confession will not be valid.

When one witness accuses another of the crime, confront the accused with the witness and have the story repeated in his presence. If the accused stands silent, such accusation may be used against him as an admission. If he does not speak or understand the English language, have the statement interpreted to him. If he makes a sign in the negative or says something in a foreign language that can be interpreted in the negative, the statement cannot be used as an admission.

Immediately after a confession is made, unless it was made in connection with a sound film recording device, the accused should be examined by a physician who is to make note of the fact whether or not the accused bears signs of bodily injury; was starved; abused, in fact, any sign on his person indicating the presence of impropriety. This should be done to anticipate the accused's repudiation of his confession which is usually done by most defendants opinion of *Com. v. Roller, 100 Pa. Supr. 125,* cited in *13 D. & C. (Pa.) 332, 338.*

CHAPTER VI

EVIDENCE NECESSARY TO CONVICT

Before the trial of the accused, the investigator should have all the necessary facts and evidence, which will, when produced before a jury, insure the conviction of the accused. The evidence which must be produced in order to convict, must show that the victim died because of a murderous act; that there was a motive for the crime; that there was an intent on the part of accused to commit the crime; that he had done so with malice; that he had premeditated and deliberated in the act; that the accused had the opportunity to commit the crime; and, finally, he should be able to produce evidence to rebut any defense that may be produced by accused.

Physical facts

By physical facts are meant all evidence that can be secured by measurement, photograph or impression.

When the deceased is found dead in a room of a house, the measurements of the room should be ascertained and photographs made. The position of every piece of furniture should be noted on a plan which should be made by the investigator. If the instrument is found on the scene of the crime, its position should be noted in relation to the body of deceased. Blood marks should be noted in the same way. If the

homicide was committed while the accused attempted to commit a robbery, during which the fatal shot was fired, the approaches to the house; all marks of forcible entry made on the windows and doors; footprints in sand and mud; fingerprints and footprints inside the house should be photographed and measured and indicated on the plan.

Photographs will be admitted in evidence at the time of the trial for proper purposes only: *Com. v. Webb, 252 Pa. 187; Com. v. Keller, 191 Pa. 122; Com. v. Winter, 289 Pa. 284;* but they will not be admitted in evidence to arouse sympathy and excite the prejudices against the accused: *Com. v. Winter, Supra;* and it is no ground for rejecting them because it may militate against the accused: *Id.*

Photographs, duly authenticated, made three days after the commission of the crime,—the day following its discovery,—and where it was shown that the police had custody of the house from the time of finding the body until after the pictures were taken, and that during this period the physical surroundings, which the photographs were intended to show, had in no way been disturbed, and no evidence was produced to show that things may have been altered between the time of the killing and the time when the police took possession, were properly admitted in evidence for the purpose of illustrating the oral testimony concerning the

condition of things in the vicinity of the body: *Com. v. Ware, 279 Pa. 282.*

In this case, the court held that: "It is universally recognized that, in a prosecution for homicide, proof of the condition of things surrounding, or in the vicinity of the body of the deceased, which tend to shed light on the circumstances of the killing, is proper evidence. (Citing *Com. v. Dantine, 261 Pa. 496; Com. v. Roddy, 184 Pa. 274).* And where the corpse was not discovered until two days subsequent to the killing does not necessarily render evidence of this character inadmissible (see *Com. v. Mudgett, 174 Pa. 211,* where such fact existed and a first degree verdict was sustained), although it may effect its probative value: *State v. Barone, 96 N. J. L. 417; Com. v. Ware, Supra.*

Expert testimony as to the identity of fingerprints is admissible in evidence. The evidence of a layman, not expert in the science of finger prints or the imprints of a knee on the ground or a bare foot print, may describe the prints he has seen but he cannot give his opinion or judgment relative thereto: *16 C. J. 1550.*

The instruments of the crime should not be handled more than necessary. They should be left in the condition in which they were found. The cartridges should not be taken out of the chambers, and the gun itself should be protected to prevent the smearing of

any fingerprints that may be thereon. The clothing of deceased bearing the bullet holes should not be used for experimental purposes. It will be invalidated as evidence. In a celebrated case tried in Philadelphia, the dress of one of the victims was ruled out because shots were fired into it to ascertain the tear a bullet would make when fired into the clothing.

Letters and papers found on the scene of the crime should be kept in celluloid covers for protection. If they are folded and unfolded many times, as they will be when examined by experts and others, they may tear, which may raise a question as to their validity.

Circumstantial evidence

The distinction between direct and circumstantial evidence, is as follows: Direct or positive evidence is where a witness can be called to testify to the precise fact which is the subject of the issue in trial; that is, in a case of homicide, that the party accused did cause the death of the deceased. Whatever may be the kind or force of evidence, this is the fact to be proved. But suppose no person was present on the occasion of the death, and, of course, no person can be called to testify to it, is it wholly unsusceptible to legal proof? Experience has shown that circumstantial evidence may be offered in such cases, that is, that the body of facts may be proved of so conclusive a character as to warrant a firm belief of the fact, quite as strong and

certain as that on which discreet men are accustomed to act in relation to their most important concerns. It would be injurious to the best interests of society, if such proof could not avail in judicial proceedings: *Com. v. Webster, 5 Cush. 295.*

Inasmuch as most crimes are committed in secret and the criminal will seek the security of darkness, circumstantial evidence must be resorted to to draw the conclusion of guilt. The laws of nature and the relation of things to each other, are so linked and combined together, that a medium of proof is often furnished, leading to inferences and conclusions as strong as those arising from direct testimony.

Circumstantial evidence is always admissible whether there are eye-witnesses or not: *Com. v. Karamarkovic, 218 Pa. 405.*

In *Com. v. Harman, 4 Pa. 269,* Gibson, C. J., held that: "Circumstantial evidence is, in the abstract, nearly, though perhaps not altogether, as strong as positive evidence, in the concrete, it may be infinitely stronger. A fact positively sworn to by a single eye-witness of blemished character, is not so satisfactorily proved, as is a fact which is the necessary consequence of a chain of other facts sworn to by many witnesses of undoubtful credibility. Indeed, I do not know whether there is such a thing as evidence purely positive. You see a man discharge a gun at another,

you see the flash, you hear the report, you see the person fall a lifeless corpse; and you *infer* from all these circumstances that there was a ball discharged from the gun, which entered his body and caused his death, because such is the usual and natural cause of such an effect . . . The only difference between positive and circumstantial evidence is, that the former is more immediate, and has fewer links in the chain of connection between the premises and conclusion; but there may be perjury in both. . . . No human testimony is superior to doubt."

Although there is an advantage in positive evidence, that the witness saw the crime committed, there is still the disadvantage, as Justice Gibson said, that he may be swearing falsely, and is therefore not entitled to belief. And, again, one has to contend with the illusion of the witness' memory. It could not be said that when there are four men in a field, that there were really twenty; or, that when a road was muddy, that it was dry and dusty; or that when the assailant wore a blue striped suit, that he wore a plain brown. Professor Hugo Münsterberg, in his book *"On The Witness Stand,"* tells of certain experiments he had made in the class room at Harvard. He says (page 21), "At first I showed them a large sheet of white paper on which fifty small black squares were pasted in regular order. I exposed it for five seconds, and asked them, how many black spots were on the sheet.

The answers varied between twenty-five and two hundred. The answers over one hundred, were more frequent than below fifty.

We had here highly trained, careful observers, whose attention was concentrated on the material, and who had full time for quiet scrutiny. Yet in both cases there were some who believed that they saw seven or eight times more points than some others saw; and yet we should be disinclined to believe in the sincerity of two witnesses, of whom, one felt sure that he saw two hundred people in a hall in which the other found only twenty-five."

The investigator of homicide cases will be told by witnesses that they saw the criminal from the flash of his gun as he fired, or that on a moonlight night they saw the accused stab the deceased at a distance of about fifty yards; and they will also tell him that on a dark night they heard the shot, turned around and recognized the accused who fired the shot. Authorities, who have experimented, tell us that the maximum distance in which a person could be recognized in moonlight, is about seventeen yards, and in starlight about thirteen feet. One could recognize the shooter from the flash of his gun only when he is looking in the direction from which the shot was fired, and one will not be able to tell from the sound alone, from which direction the shooting was being done, especially when the gun is fired behind the listener.

But in the case of circumstantial evidence, where no witness can testify directly to the fact to be proved, it may be arrived at by a series of facts, which, by experience, it has been found so associated with the fact in question, as, in the relation of cause and effect, that they lead to a satisfactory and certain conclusion.

The advantages are, that, as the evidence commonly comes from several witnesses and different sources, a chain of circumstances is less likely to be falsely prepared and arranged, and falsehood and perjury are more likely to be detected, and fail of their purpose. The disadvantages are, that a jury has not only to weigh the evidence of facts, but to draw just conclusions from them; in doing which they may be led to prejudice or partiality, or by want of due deliberation and sobriety of judgment, to make hasty and false deductions; a source of error not existing in the consideration of positive testimony: see *Wharton Criminal Law, 4th Ed. p. 409.* See *State v. Roe, 12 Vt. 93; Moore v. Ohio, 2 Ohio (N. S.) 500.*

The circumstances and facts must be such as are consistent with the guilt of the accused party in order to warrant a conviction under circumstantial evidence. And this must be proved beyond a reasonable doubt. When the evidence of the Commonwealth does not prove with a reasonable and moral certainty that the accused committed the crime, there is a reasonable doubt.

Circumstantial evidence is both legal and competent, and should be given the same weight as direct testimony when it is of such character as to exclude every reasonable theory or hypothesis other than the accused's guilt beyond a reasonable doubt: *State v. Coleman, 17 S. Dak. 494;* See *Com. v. Schmous, 162 Pa. 326; Com. v. Johnston, 98 Pa. Supr. 586.*

The corpus delicti is proven when it can be shown that death was consistent with the criminal act.

To show that the defendant had the opportunity to commit the murder, the investigator must have evidence to show that accused was in the immediate neighborhood of the scene of the crime at or about the time of the killing. If the accused defends himself with an alibi, it is the investigator's duty to secure sufficient evidence to refute this defense and must be able to show that accused could have been at the scene of the crime at the time the murder was committed. In one case, the defendant claimed that he was in a barber shop one hundred yards away and that he was there at the time when the murder was committed. The investigator in that case, interrogated the witnesses whom the accused claimed were with him at the time of the murder. He found that they were barbers and that they were always busy and did not pay much attention to accused, thereby raising a doubt as to the strength of the accused's alibi, for he could have left the barber shop, committed the murder a hundred

yards away, and return without his absence being noticed.

And where it is known that the defendant will plead insanity or drunkenness, the investigator should do his utmost to secure facts to refute this. Of course, medical testimony will have to be used, but the investigator will be of great help by carefully questioning the accused. Did he have a clear and understanding mind? Was his conversation intelligent and sensible? Did he impress as knowing what he was saying? Did he act drunk? Does he tell a lucid and connected story of his movements during the time of the murder? When the investigator or witnesses to the crime can answer these questions affirmatively, the defendant's defense is negatived.

Acts of accused indicative of guilt

The withdrawing of the accused's whole deposit before the commission of the crime; fleeing the jurisdiction after the crime was committed; accusing another who is innocent; having in his possession maps and memoranda showing the scene of the crime with the roads marked as a means of escape; having in his possession the fruits of the crime, the possession of which accused cannot satisfactorily explain, are all acts that are indicative of his guilt.

See Chapter IX on evidence pertaining to homicide in which concrete cases are cited.

CHAPTER VII

THE ARREST, SEARCH, AND SEIZURE

The arrest

When the investigator has secured his evidence, all of which point to the guilty party, he should immediately proceed to make the arrest. First, there must be a purpose to take the person into custody under some authority which fact must be disclosed to the person taken into custody. Second, there must be an actual or constructive detention or seizure: see *Cornelius, S. & S.*

Black's Law Dictionary defines arrest to be: "The stopping, seizing or apprehending a person by lawful authority; the act of laying hands upon a person for the purpose of taking his body into custody of the law; the restraining of the liberty of the man's person in order to compel obedience to the order of a court of justice, or to prevent the commission of a crime, or to insure that a person charged or suspected of a crime may be forthcoming to answer it."

It is the duty of one making an arrest to make a reasonable disclosure, adapted to the circumstances, of his purpose, his authority, and cause of arrest and to demand submission: *Brooks v. Com., 61 Pa. 352; McAleer v. Good, 216 Pa. 473;* but notice is not always necessary: *Shovlin v. Com., 106 Pa. 369.*

An arrest may be made when there is a warrant issued; when a felony is committed in the presence of the officer or when he has probable cause to believe that the person he seeks to apprehend has committed a felony. In some states, such as Oklahoma, New York and Iowa, a private person may arrest a felon when he has probable cause for suspicion.

A private person, to arrest one without a warrant, cannot act upon information received from others. He must see the commission of the felony or have reason to believe that a felony is about to be committed: *Com. v. Grether, 204 Pa. 230; Com. v. Long, 17 Pa. Supr. 641.*

Where a burglary has been committed: *Com. v. Long, Supra,* or a larceny: *Brooks v. Com. 61 Pa. 352,* an officer or a private person who has seen the crime committed may arrest the offender, even without a warrant, and if the criminal flees and the officer or private person cannot apprehend him except by killing him, such killing is justified: *Com. v. Max, 8 Phila., (Pa.) 422; Com. v. Brooks, Supra.*

And where an officer attempts to arrest a person on a warrant or under any justifiable reason and the person resists arrest, the officer may remain where he is and defend himself, using sufficient force in doing so. The law does not require him to flee like when a private person who is attacked, but he may persist in the arrest. When the arrest is for a misdemeanor,

he is not justified in taking the life of the offender. But it is otherwise, when the offender is a felon, and is attempting to flee: *Trickett, Cr. L., 697.*

An officer making an illegal arrest does so at his peril and may be resisted, and if the person arrested illegally has reasonable grounds to believe and does believe that he is in imminent danger of death or great bodily harm (and his own belief is the criterion), and there is no apparent way to avoid such death or great bodily harm except to shoot and kill the officer, and he shoots for that purpose, it is an act of self-defense and from apparent necessity: *Com. v. Crowley, 26 Pa. Supr. 124;* See *Com. v. Troup, 302 Pa. 246,* for a case where is was held that defendant did not shoot from necessity.

And the use of force by the officer to the point of causing death while attempting to make an illegal arrest, would not be excusable: *Com. v. Max, 8 Phila., (Pa.) 422.*

Search and seizure

Article IV of the Constitution of the United States, provides: "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or

things to be seized": Iterated in *Gambino v. U. S., 48 U. S. 137.*

The person making the arrest has the right to search the prisoner and the place where the arrest is made in order to find things or evidence connected with the crime or to be used by the prisoner to effect an escape: *Agnello v. U. S., 269 U. S. 20.*

The officer may search the person of the accused and may seize any evidence to convict the accused: *Weeks v. U. S. 232 U. S. 383;* and take any such articles in the room where the accused is at the time of his arrest: *Cole v. Com., 201 Ky. 543;* but he cannot go to his residence and make a search when the arrest takes place away from his residence: *Gould v. U. S., 255 U. S. 298; State v. Rowley, 187 N. W. (Ia.) 7.*

The property taken at the time of the arrest must be of evidential value to incriminate the accused; but the searcher cannot seize business records or other articles which are of no value in causing the conviction of accused or take the money upon his person: *George v. Harris, 69 Ill. App. 616;* and the use by the state of evidence illegally acquired by others does not necessarily violate the constitution, nor affect its admissibility: *Com. v. Dabbierio, 290 Pa. 174.*

See Chapter IX, for admissibility of explanation made by accused when the fruits of the crime were found in his possession.

CHAPTER VIII

ANALYSIS OF THE CASE BY INVESTIGATOR

Before the accused is brought to trial to answer to the charge on which he has been indicted, the investigator should have all his evidence in shape and have ready all the witnesses, that are going to testify for the commonwealth, to tell their story to the district attorney. From these witnesses and the testimony they will give, the prosecuting attorney will be in a position to prepare his trial brief, or outline of battle.

If the investigator has kept his notes on the case in good order, he will be able to enlighten the prosecutor on any point he may be doubtful. The notes do not have to be voluminous; they can be kept in outline form and still be intelligent. But every fact and its source which have been uncovered by him must be in the notes. After all the evidence has been secured by him, he should go over it and put it in order. The expert investigator, when making an analysis of his notes, will place them in the order which he thinks the district attorney will use in prosecuting the case before the jury.

The analysis made by the investigator could be placed in chronological order (according to the time

of happening) or he could use the elimination plan (showing that any other cause of death is untenable).

In the chronological plan the investigator will show, step by step, what the accused did on the day of the murder, from the time he planned it, to the commission of the crime, and to his escape.

The investigator, to be of help, must understand what evidence is required by the state to insure the conviction of the accused. He must be able to connect the one, who has threatened the life of the deceased, with the crime to that point, to the exclusion of any other reasonable hypothesis than his guilt. And the circumstances must be such that it will satisfy a jury that he is the party who committed the crime, beyond a reasonable doubt: *Com. v. Schmous, 162 Pa. 326.*

Where it is understood that the accused will defend himself by showing that the deceased died from self-inflicted wounds, the investigator should prepare his case showing that such a defense is untenable. This can be done in the following manner:

Deceased did not commit suicide because

(a) The wound could not have been inflicted by deceased;

(b) There were no powder or burn marks on his person;

(c) There was testimony to the contrary;

1. .....
2. .....
3. .....

Deceased was not killed by accident for

(a) There would be testimony to that effect;

(b) The gun was not found on the scene of the crime, etc.

Burglars were not responsible for deceased's death, for

(a) There were no marks of entrance on doors or windows;

(b) A light snow fell the night before and there were no footprints to indicate one entering or leaving the place;

(c) There were no signs of searching the premises by anyone, etc.

Accused must have committed the crime, for

(a) There was a motive;

(b) He made preparations for committing it;

(c) He had the opportunity of doing it;

(d) He accused an innocent person for the crime;

(e) He attempted to escape; and

(f) Any other hypothesis is untenable.

It can be readily seen that when the investigator keeps intelligent notes of all the evidence he has secured against the accused, it will be an easy matter for the district attorney to secure a conviction.

CHAPTER IX

EVIDENCE PERTAINING TO HOMICIDE

It is absolutely necessary for the investigator to understand what evidence is necessary to convict. A thorough study of the following cases will give him this, and, from them, he will know what line of questioning he should follow in order to secure the necessary information.

When homicide occurs

An illegal homicide is established when one purposely, with a deadly weapon, kills another: *Com. v. Palmer, 222 Pa. 299.*

The killing may be by any of the thousand forms of death by which life may be overcome: *4 Bl. Com. 196.* There must be a corporeal injury inflicted. And if a man either by working upon the fancy of another, or possibly by harsh or unkind usage puts another into such passion of grief or fear, that the party either dies suddenly, or contracts some disease, from which he dies, though as the circumstances of the case may be, this may be murder or manslaughter in the sight of God, yet, in the eyes of man it cannot come under the judgment of felony, because no external act of violence was offered of which the law can take notice: *Hale, P. C. 429.*

In proving murder by poison, the evidence of medical men is frequently required and it is not unusual when they will differ. When they will not agree as to whether or not poisoning was the cause of death, circumstantial evidence in the nature that the accused was interested in the victim's death and that he made preparations of some poisons for no reason whatsoever, and that the accused attempted the life of the victim before, and that the victim, prior to his death was enjoying good health, should be introduced and it may warrant a conviction: *Roscoe Crim. Evi. 715.*

It is essential that the body of deceased be found: *Stocking v. State, 7 Ind. 326;* and must be identified.

The corpus delicti is proven when the circumstances attending the death are consistent with crime, although they may be consistent with accident, or suicide, and it is not necessary to show by affirmative proof that the latter two possibilities do not exist before evidence as to who did the act is admitted: *Com. v. Puglisi, 276 Pa. 235; Com. v. Bishop 285 Pa. 49; Com. v. Coontz, 288 Pa. 74.*

It is enough, however, to show a death, but death must be consistent with a criminal act before a conviction will be sustained: *Com. v. Bishop, Supra.*

Motive

"Motive" and "intent" are not identical, and an

intent may exist where a motive is wanting. Motive is the moving power which impels to action for a definite result; intent, is the purpose to use a particular means to effect such result. Motive, is the inducement, cause, or reason why a thing is done: *Bl. Law Dict.*

When a crime is clearly proved to have been committed by a person charged therewith, the question of motive may be of little or no importance, but criminal intent is always essential to the commission of a crime: *Bl. Law Dict.;* Citing: *People v. Molineaux, 168 N. Y. 264; Warren v. Tenth Natl. Bk., 29 Fed. Cas. 287.*

But motive is often an important subject of inquiry in criminal proceedings, particularly where the case depends mainly or entirely upon circumstantial evidence, the combination of motive and opportunity (for the commission of the particular crime by the person accused) being generally considered essential links in the chain of such evidence while the absence of all motive on the part of the prisoner is an admissible and important item of evidence in his favor: *Bl. Law Dict.*

Bishop in his *"New Criminal Procedure"* states (para. 629) "Any motive rendering the killing probable, or explaining it against inherent improbabilities, or otherwise helpful to the jury as a circumstance, may be proved against the defendant." Citing *Fraser*

v. State, 55 Ga. 325; Houser v. Com. 51 Pa. 332; Templeton v. People, 27 Mich. 501; Noles v. State, 26 Ala. 31.

Intent

He who uses on the body of another, at some vital part, with a manifest intention to use it upon him, a deadly weapon, as an axe, a gun, a knife or pistol, must in the absence of qualifying facts, be presumed to know that his blow is likely to kill; and knowing this, must be presumed to intend death which is the probable and ordinary consequences of such an act: *Com. v. Drum, 58 Pa. 9.*

And where the defendant killed the deceased, without any intent to take life or without premeditation, wilfulness or deliberation, he is not entitled to an acquittal, but is guilty of murder in the second degree: *Com. v. Millien, 291 Pa. 291,* and if he took deceased by the throat, he wickedly intended to do her great bodily harm, even though he may not have intended to kill her; this would be murder of the second degree: *Com. v. Marshall, 287 Pa. 512.*

And in manslaughter, malice expressed or implied is wanting: *East, P. C. 218,* and it has been said that there cannot be any accessories before the fact to manslaughter: *Hale, P. C. 437.*

Involuntary manslaughter consists in the killing of another without malice and unintentionally, but in

doing some lawful act not amounting to a felony nor naturally tending to cause death or great bodily harm, or in negligently doing some act lawful in itself, or by the negligent omission to perform a legal duty: *Com. v. Mayberry, 290 Pa. 195; Com. v. Micuso, 273 Pa. 474; Com. v. Gable, 7 S. & R. 422.* Under an indictment for murder and manslaughter, there can be no conviction for involuntary manslaughter: *Com. v. Weinberg, 276 Pa. 255; Com. v. Mayberry, 290 Pa. 195.*

Evidence of the accused's intentions is relevant to show he afterwards carried out his designs: *Com. v. Marshall, 287 Pa. 512.* Intention is a fact, and the commonest way for such a fact to evince itself is through spoken or written declarations: *Id.* and where the threat was against a class of persons rather than to the individual one actually killed, does not effect its admissibility: *Com. v. Page, 265 Pa. 273.*

Where it was contended that accused fired to wound and three shots were fired, the court held that even if the first shot was the one causing death the jury had the right to take account of the other two, quickly following the first, as indicating what was the slayer's intent: *Com. v. Cavalier, 284 Pa. 311; Com. v. Millien, 291 Pa. 291.* The firing of the additional shots negatived the idea that the defendant had shot only to wound in order to prevent deceased from reaching for a pistol: *Com. v. Millien, Supra.*

Where one intentionally uses a deadly weapon upon a vital part of the body of another, there is a legal presumption of an intent to kill which cannot be rebutted by the assailant's own testimony that he did not so intend . . . But whether the assailant intended to use the weapon upon a vital part is a question of fact and he may deny that he intended to so use it, or that he intended to take life: *Com. v. Zec, 262 Pa. 251; Com. v. Millien, 291 Pa. 291.*

In a case where seven bullets were found in the body of deceased, it was held that this circumstance in itself is sufficient to establish the intent to kill: *Com. v. Cavalier, 284 Pa. 311.*

Where one makes a statement after a threat to kill, "that he has served time in jail," it was evidence of a deliberate intention to do so without regard to consequences: *Com. v. Fiorentino, 266 Pa. 261.*

At common law, a child under seven years of age is conclusively presumed incapable of crime. Between the ages of seven and fourteen, the law also deems the child incapable, but only prima facie so, and evidence may be received to show criminal capacity. Over the age of fourteen, infants, like all other persons, are prima facie capable; and he who would set their incapacity must prove it: *Com. v. Cavalier, 284 Pa. 311.*

See the cases under the caption of Insanity and Drunkenness, in this chapter.

Deliberation and premeditation

After the investigator has shown in his notes, that the accused had a motive for the crime, he must next show that the accused began his preparations for the commission of the crime. Here it can be stated that he purchased a gun and had gone to his bank and withdrew all his deposits to prepare himself for flight. It can also be shown at this time that he went into conference with accomplices and planned the deed, and, at the time, agreed with them to meet at a certain place to commit the deed.

There are some cases on record where preparation was not shown, but it has been inferred from the circumstances surrounding the perpetration of the deed.

In *Com. v. Drum, 58 Pa. 9,* the court held: "*** It is equally true both in time and in fact and from experience, that no time is too short for a wicked man to frame in his mind his scheme of murder, and to contrive the means of accomplishing it. The purpose to kill must be fully formed and the purpose must not be the immediate offspring of rashness and temper and that the mind has become fully conscious of its own design. If there be time to frame in the mind, fully and consciously, the intention to kill, and to select the weapon or means of death, and to think and know before hand, though the time be short, the use to be

made of it, there is time to deliberate and meditate. ***"

To clearly show that murder is of the first degree, there must have appeared a well-defined intent to take life; this may and often is inferred from the circumstances. Furthermore, such intent may be implied from the deliberate use of a deadly weapon upon a vital part, in other words, a person is presumed to intend the natural and probable consequences of his own voluntary acts. Again, although there may be no evidence that defendant bore deceased any ill-will prior to their meeting, it was for the jury to say, under the instructions of the trial judge, whether during the brief conversation, defendant formed in his mind the conscious purpose of taking life and selected the instrument of death: *Com. v. Scott, 284 Pa. 159.*

Deliberation and premeditation may appear from the fact that the rifle with which the killing was done carried but a single cartridge and had to be reloaded after each succeeding shot: *Com. v. Cavalier, 284 Pa. 311.*

The securing of a knife on a previous day; that accused remained at home feigning sickness; that he immediately sought safety in flight; that he made unjust complaint of his de facto wife's deportment and was causelessly jealous of her and afraid that she

would leave him, as well as the absence of an immediate cause; all point to premeditated homicide: *Com. v. Patterson, 272 Pa. 522.*

Capital convictions were sustained where time for deliberation was very brief: *Com. v. Scott, 284 Pa. 159; Com. v. Buccieri, 153 Pa. 535; Com. v. Reed, 234 Pa. 573; Com. v. Dreher, 274 Pa. 325.* A moment is sufficient to form and deliberate upon the purpose to take life and premeditate the means of taking it: *Jones v. Com., 75 Pa. 403;* and in the Buccieri case, *supra,* ten to twenty seconds were held sufficient. The deliberation and premeditation required by the Pennsylvania statute are not upon the intent but upon the killing: *Keenan v. Com., 44 Pa. 55.*

Malice

He who uses a deadly weapon without a sufficient cause of provocation, must be presumed to do it wickedly, or from a bad heart: *Com. v. Drum, 58 Pa. 9; U. S. v. McGlue, 1 Curtis C. C. 1.*

The court, in *Com. v. Palmer, 222 Pa. 299,* held that "We may take it for a general rule that all homicide is malicious, and of course amounts to murder, unless where justified by the command or persuasion of the law, excused on account of accident or self-preservation, or alleviated into manslaughter by being either the involuntary consequence of some act not

strictly lawful, or (if involuntary) occasioned by some sudden and sufficient violent provocation. And all these circumstances of justification, excuse or alleviation, it is incumbent upon the person to make out to the satisfaction of the court and jury."

Express malice is when one, with a sedate and deliberate mind, and formed design, kills another; which formed design is evidenced by external circumstances discovering that inward intention; as lying in wait, antecedent menaces, former grudges, and concerted schemes to do him some bodily harm: *Wharton on Homicide, 38, 39.*

Where a man poisons another, in such a deliberate act the law presumes malice, though no particular enmity can be proved: *2 Hale, P. C. 455.*

Defenses by the accused

The accused seldom pleads guilty to the charge of murder, even when he knows that the state can produce evidence to show, beyond a reasonable doubt, that he did commit the crime. To rebut the overwhelming testimony of the state, the accused has been known to plead an alibi; insanity; drunkenness; provocation; self-defense; that the victim committed suicide or died from accident; that he killed the victim by misadventure or that the blow dealt by him was not the cause of death.

Insanity

In many jurisdictions the plea of insanity is an affirmative plea and must be proved by a fair preponderance of the evidence by the defense. There are still some states that require the prosecution to prove that the accused was sane before the accused can be convicted. But these are few.

In *Com. v. Barnes, 199 Pa. 353,* it was held that, when the commonwealth clearly establishes an intentional killing by the use of a deadly weapon, an illegal homicide is presumed. If the defense is insanity, the burden of sustaining it is upon those having charge of the defense, for the accused is presumed to be sane and his insanity must be established by a fair preponderance of the evidence.

See also *Com. v. Myma, 278 Pa. 505; State v. Austin, 71 Ohio St. 317; State v. Lee, 24 Del. 18; Russell v. State, 17 Ala. App. 436,* to the same effect.

The doctrine which recognizes this mania (an irresistible inclination to kill) is dangerous in its relations, and can be recognized only in the clearest cases. It ought to be shown that it was habitual, or at least to have evinced itself in more than a single instance. To establish it as a justification in any particular case, it is necessary either to show, by clear proofs, its contemporaneous existence evinced by present circum-

stances, or the existence of a habitual tendency developed in previous cases, becoming in itself a second nature: *Com. v. Moser, 4 Pa. 264; Com. v. Cavalier, 284 Pa. 311.*

Homicidal mania is no defense unless it is proven to have existed habitually and contemporaneously and proof of premeditation and malice will nullify this excuse: *Com. v. Hillman, 189 Pa. 548.*

The prisoner makes out a defense that calls for an acquittal, if the jury will find from the fair preponderance of the evidence that, at the time of the homicide, he was so mentally deficient that he did not know what he was doing, or that he did not realize the nature or appreciate the consequences of the act he was committing: *Com. v. Calhoun, 238 Pa. 488. Com. v. Berchine, 168 Pa. 603; State v. Hyde, 90 S. Car. 296; Cutliff v. State, 17 Ala. App. 586* and *People v. Willard, 150 Cal. 543,* are to the same effect.

And where one alleges that he was injured in such a manner as to render him irresponsible before he killed, his defense amounts to a plea of insanity: *Com. v. Santos, 275 Pa. 515.*

Insanity is a complete defense or none at all: *Com. v. Wireback, 190 Pa. 138; State v. Maioni, 78 N. J. L. 339.*

Insanity cannot be inferred from the fact that other members of the accused's family were in insane asylums unless there is an offer to prove that the insanity in such kinsmen were transmissible: *Com. v. Dale, 264 Pa. 362.*

Acts and circumstances before the killing may be introduced to negative the contention that the accused was insane: *Com. v. Miller, 258 Pa. 226.*

A mere doubt as to insanity does not justify an acquittal: *Com. v. Sushinski, 242 Pa. 406.* But a reasonable doubt will justify it: *Brotherton v. People, 75 N. Y. 159; Armstrong v. State, 30 Fla. 170.*

Drunkenness

To constitute murder in the first degree there is required an intent to take life and if the jury were persuaded by the weight of the evidence that the defendant was at the time too drunk to form such intent, it would not acquit the defendant, but it would reduce the offence to second degree murder: *Com. v. Prescott, 284 Pa. 255.*

Self-defense

"There is no presumption, in the face of clear evidence of intentional killing with a deadly weapon, that life was taken that life might be spared. The presumption is otherwise, in the absence of anything

developed to the contrary in the commonwealth's presentation of the case, and when the attempt is made to rebut that presumption by the affirmative plea of self-defense, it must be made out by a fair preponderance of the evidence. The guilt of the accused must be established in the first instance beyond a reasonable doubt, and where so established he is not to be acquitted because the jury, after hearing him or his witnesses, may be in doubt whether he acted in self-defense. In making that defense, he admits his intentional killing of another—a crime under divine and human law, unless it appear in the proof of the killing that it was excusable—and the burden is righteously upon him to show that it could not be avoided. The burden of proving self-defense is not placed heavily upon one accused of taking life. Sacred as is human life, he is not bound to show beyond all doubt that he was compelled to take it, but is humanely permitted to satisfy the jury by a fair preponderance of the evidence (outweighing that of the commonwealth) that he killed under circumstances justifying his belief that his own life could not otherwise have been saved. (See *Oliver v. State, 17 Ala. 587).* When this affirmative defense is left in doubt, it has not been established at all as a basis of acquittal": *Com. v. Palmer, 222 Pa. 299.*

And where one accused of homicide pleads self-defense, he may introduce evidence of communicated

threats made against him by the deceased: *Com. v. Principatti, 260 Pa. 587,* so as to show that deceased was the aggressor: *Com. v. Keller, 191 Pa. 122.* See also *Keener v. State, 18 Ga. 194; State v. Hays, 23 Mo. 287* and *Dupree v. State, 33 Ala. 380.*

Provocation

Where one is killed by a wound in a vital part, administered through a deadly weapon, no words of profanity, reproach, or abuse, or slight assault, are provocations sufficient to free the killing party, from the guilt of murder. The law imposes on everyone the duty of keeping his passions under reasonable restraint, and therefore, if he lash himself into a fury at some slight provocation, or without provocation, and without reasonable excuse, he cannot defend against murder for such passion, nor can he by recollection of some past injury or insult, or black hand demand for money, work himself into a heat over it, and so excuse himself. The act to reduce the murder to manslaughter must be a sudden and sufficient provocation: *Com. v. Russogulo, 263 Pa. 93.*

The fact that deceased threatened to strike accused with a stick and the stick did inflict a bruise on accused's cheek, was held no justification for the shooting: *Com. v. Digeso, 254 Pa. 201.*

A person believing that his life is in immediate peril

and of great personal violence may protect himself even by taking his assailant's life if necessary: *Holmes v. State, 23 Ala. 17,* and see *Pond v. People, 8 Mich. 150; Dupree v. State, 33 Ala. 380; Logue v. Com., 2 Wright (Pa.) 265.* But he must first do everything to avoid the necessity of killing his assailant: *Mitchell v. State, 22 Ga. 211; People v. Hurley, 8 Cal. 390.*

The length of time intervening between the threat and the meeting is a circumstance to be considered by the jury in determining whether or not there was a connection between the threats and the homicidal acts: *Com. v. Jones, 269 Pa. 589.* Nine days intervening was held to be not remote: *Com. v. Principatti, 260 Pa. 587.* And also three to five months: *Com. v. DuBoise, 269 Pa. 169.* Evidence of a fight six hours before between the deceased and accused did not show provocation: *People v. Smith, 26 Cal. 665.*

In a case involving prior threats one is justified in acting on a hostile demonstration such as the pulling of a gun, causing the defendant to defend himself: *Com. v. Principatti, 260 Pa. 587.*

Wife's misconduct

The wife's alleged misconduct, if true, afforded no excuse for the taking of life: *Com. v. Scherer, 266 Pa. 210.*

Suicide

The great weight of authority and reason demand that, in the trial for homicide where self-destruction of the deceased is set up as a defense, the accused should be permitted to introduce declarations, made by the alleged victim, reasonably close to the time of her death, evincing an intention to take her own life; and particularly is this true where, the circumstantial evidence is consistent with the defense. The conclusion that deceased died from her own design to take her own life can be reached through some act or word of the person in question to show the state of mind or intention which was carried into execution: *Com. v. Santos, 275 Pa. 515.*

Alibi

The weight of the testimony from the preponderance of the evidence, that accused was not at the scene of the crime at the time of the killing, is sufficient to find the accused not guilty of the offense. If the accused had left the place where he contends he was at the time of the killing, long enough to perpetrate the crime and return, his alibi fails: *Com. v. Delfino, 259 Pa. 272.*

And where a coal miner claimed that he was working at the time in the mine and had done that day a certain amount of work, the defense can show, in support of the alibi what other men could do in the same period of time: *Com. v. Mazarella, 279 Pa. 465.*

The failure to establish the alibi is not conclusive against the accused that he committed the crime: *State v. Collins, 20 Ia. 85;* and it raises no presumption against him: *Toler v. State, 16 Ohio St. 583; Roscoe Crim. Evi. 16.*

Mistake or misadventure

The accused cannot escape by showing that he mistook the deceased for some one else: *Com. v. Eisenhower, 181 Pa. 470.*

Death from other cause

And the accused cannot set up the defense that death was the result of an accident occurring in the operation which his felonious act made necessary: *Com. v. Eisenhower, Supra.* But where the wound is not dangerous in itself and death was caused by erroneous treatment, the author of the wound will not be held accountable for the death of the victim: *Parsons v. State, 21 Ala. 300.*

Acts of accused indicative of guilt

Where the accused, on the afternoon of the day of the homicide, withdrew from the local bank his entire deposit amounting to two hundred dollars, which with other money on his person was found upon him when arrested, was a circumstance tending to show preparation for flight: *Com. v. Delfino, 259 Pa. 272.*

Fleeing the jurisdiction following the commission of a crime is evidence of guilt: *Com. v. McMahon, 145 Pa. 413; Com. v. Fasci, 287 Pa. 1.*

The following acts by the accused have been held an indication of his guilt: Diverting suspicion by accusing an innocent person of the crime: *Com. v. Bishop, 285 Pa. 49;* offering to bribe an officer and attempt to escape: *Whaley v. State, 11 Ga. 123; Fanning v. State, 14 Mo. 386;* the accused's concealment in fear of arrest: *People v. Pitcher, 15 Mich. 377;* Escaping from jail and his recapture: *Hittner v. State, 19 Ind. 48.*

The possession of the fruit of the crime, is of great weight in the establishing of the proof of the murder, when the crime has been accompanied with robbery: *Williams v. Com., 29 Pa. 102; State v. Merrick, 19 Me. 398.* And in order to warrant conviction upon evidence as to the possession of stolen property, the possession must be recent, taking into consideration the nature of the property and all the circumstances: *Com. v. Berney, 28 Pa. Supr. 61; State v. Bruin, 34 Mo. 537; People v. Kelley, 28 Cal. 423; Com. v. Bell, 102 Mass. 103.*

The guiding rule may be stated thus: The possession of recently stolen property by a person is evidence from which it can be found he is the thief, but the presumption is one of fact, not of law, and the

jurors must pass on it as part of the evidence against the accused. In doing this they must also judge of his explanation, which, even though not entirely believed, may raise a reasonable doubt of defendant's guilt, or, if accepted as true, may overcome the presumption, or inference, against him and require further proof from the prosecutor; on the other hand, if the explanation is rejected in whole or in part because unworthy of belief, this may serve to strengthen the case of the commonwealth accordingly: *Com. v. Newman, 276 Pa. 534.*

A search is made up of several particulars, and when it has been instituted by the prosecution and conducted by a public officer, the spontaneous explanations of the prisoner made on the spot, in the very act of being searched, and relating directly to what is found in his pockets, are just as much part and parcel of the search as the things found. If the prosecution would have the fact in evidence that the constable found the money, they were bound to take it in connection with the instant explanation of the prisoner. It is unnatural to dissever occurrences so closely allied. The declarations were part of the res gestae: *Rhodes v. Com., 48 Pa. 396.*

A story by the accused may be strange and weird, sometimes unreasonable, and still be true, and if the jury saw fit to accept accused's explanation of the

possession of the stolen property, they might do so: *Com. v. Newman, 276 Pa. 534.*

The fact that a memorandum book diagram was found in a room occupied by the accused jointly with others which showed a study of the highways leading from the scene of the crime and in the direction the robbers fled after committing the crime, made the diagram competent evidence to show preparation for its commission and plans for escape of the participants. It was a link in the chain of circumstances tending to show defendant's guilt and its weight was for the jury's consideration: *Com. v. Bassi, 284 Pa. 81.*

Though there was no direct proof of ownership of the plan, the circumstances inclined to support the inference that defendant and Bassi had together planned the crime and also the means of escape: *Com. v. Pezzi, 284 Pa. 85.*

On the trial for murder, it is proper for the commonwealth to show that the clothing belonging to an accomplice previously convicted, were found in a room occupied by both, before and after the murder. In such case, it is also proper to offer in evidence a hat bearing marks indicating its purchase at a store near the place of the robbery and which had been found in the hotel room occupied by both. It was offered for the purpose of showing defendant was in

the neighborhood of the store at which the hat was purchased shortly before the crime was committed, thus tending to identify the defendant as one of the bandits: *Com. v. Pezzi, 284 Pa. 85.*

Instruments of the crime

An officer making an arrest upon a criminal charge may also take into his possession the instruments of the crime and such other articles as may reasonably be used as evidence upon the trial: *Com. v. Keister, 289 Pa. 225.*

If the evidence shows the ingredients of murder, the instrumentality of its commission is a matter of no consequence: *Com. v. Mayberry, 290 Pa. 195.*

The implement in itself, as an indication for a purpose to effect the result attained, is not separable in any case from its use. A weapon ordinarily may be employed in such a manner that death is improbable. Its nature must be considered with the manner of its application and its effect, and from the combined circumstances, there may appear an intention to kill. The intent to kill is, of course, a question for the jury to decide: *Com. v. Blakely, 274 Pa. 100.*

While the commonwealth was unable to prove that (two revolvers, found in a room occupied by defendant and his accomplice) these were the identical weapons used in the perpetration of the crime, the

fact that they were in the possession of the defendant and his companion, were proved to belong to them and were of a calibre similar to the bullets fired at the guards at the time of the robbery, made them competent; the weight of the evidence, however, was for the jury: *Com. v. Pezzi, Supra.*

A gun found forty two hundred feet from the place of the killing is properly admitted in evidence, where it appears that two chambers had been used within a few hours of its finding, which covered the time of the murder; that the bullets were of the same size and make as the one used in the killing, and that the gun was subsequently concealed: *Com. v. Puntario, 271 Pa. 501.*

The effect of gunshot wounds on clothing at various distances is admissible in evidence to show at what distance the gun was fired: *Com. v. Mulferno, 265 Pa. 247.*

In any case, where the nature and properties of an article such as, a gun, require consideration by the jury, it is proper to submit a duplicate or facsimile conveying a correct impression: *Com. v. Fry, 198 Pa. 379; Com. v. Miller, 258 Pa. 226.*

A club was held to be a deadly weapon: *Com. v. Blakely, 274 Pa. 100; Com. v. Washington, 202 Pa. 148;* a steel pin bolt: *Com. v. Newman, 276 Pa. 534;*

a shovel: *Com. v. Anthony, 259 Pa. 65; Onofri v. Com., 20 W. N. C. (Pa.) 264; Com. v. Toth, 145 Pa. 308;* a stick with strap: *Com. v. Murray, 2 Ash. (Pa.) 41;* and a murder was held to have been committed with hands and feet: *Com. v. Lisowski, 274 Pa. 222.*

In *Com. v. Scott, 281 Pa. 548,* it was held that the use of a hammer, where death results, is not prima facie the use of a deadly weapon.

To warrant a conviction of murder in the first degree, it is not essential that the weapons used should necessarily produce death: *Com. v. Murray, 2 Ash. (Pa.) 41.*

Evidence in general

A defendant in a murder trial cannot claim that he was required to bear witness against himself because he was required to wear certain clothes at the trial similar to those worn by him at or about the time of the killing, and grow a mustache while in prison, when there is no evidence that force or compulsion was used to require defendant to grow the mustache and wear the particular clothes: *Com. v. Bassi, 284 Pa. 81.*

It is error to admit in evidence clothes worn by the deceased when it serves no legitimate purpose and does not aid in solving any issue in the case, and its only effect is to inflame the minds of the jury: *Com.*

v. Flood, 302 Pa. 190 citing *30 C. J. 321 sec. 568;* and this rule would apply where a parent was called to testify to no material fact. But this rule is otherwise, however, where there is a question as to the location of the wounds, their effect and character: *Com. v. James, 294 Pa. 156;* and there is no known rule of law that will prevent a relative from outbursts of grief while on the witness stand testifying in a case to a material matter. If he does so unnecessarily and the jury is swayed thereby the trial judge should order a new trial: *Com. v. Flood, Supra.*

A letter from one spouse to the other may be produced in evidence by a third person into whose possession it has come, unless such person obtained it through the agency or connivance of the spouse to whom it was addressed; and a third person to whom a letter is voluntarily exposed by the writer may testify as to its contents although it was addressed to the spouse of the writer: *40 Cyc. 2358;* see *State v. Hoyt, 47 Conn. 518; Com. v. Bishop, 285 Pa. 49.*

A letter found in defendant's pocket was admittedly written by him and was competent evidence, as it tended to rebut his testimony and to show premeditation and also bore upon his mental condition: *Com. v. Scherer, 266 Pa. 210.*

A letter to the mother of defendant was admissible where the letter was turned over to the commonwealth

by defendant's brother. And a letter by defendant to his wife was also competent, as defendant gave it in an open envelope to an officer, who kept it and sent the wife a copy. As she never had the letter and never gave it to anyone it does not fall within the rule that one spouse cannot furnish evidence against the other: *Com. v. Bishop, 285 Pa. 49.*

The name on a letter is not sufficient to identify it unless the witness can testify to the handwriting being that of the defendant or that the letter was received in reply to one he sent to the defendant; or that the writer can be identified from the contents of the letter of which both were familiar.

In *Com. v. Bassi, 284 Pa. 81*, a case where a letter was received by the witness which was not signed but bore the word "Ugo" on one corner and it appeared that Ugo was the name by which defendant was known to the witness and the witness did not testify to the knowledge of the handwriting but said it came from defendant "because it had Ugo's name to it," the court held that: " * * * While this alone would be insufficient to identify the letter *(Sweeney v. Oil Co., 130 Pa. 193)*, the contents indicated the writer had knowledge of the matters with which the witness and defendant were both familiar . . . . This was sufficient to enable the witness to identify the writer of the letter and to warrant a finding that it was written by the defendant. * * * "

The law will receive in evidence any reliable mechanism produced by scientific knowledge for the discovery and recording of facts: *Com. v. Roller, 100 Pa. Supr. 125.*

In *Moncur v. Western Life Ind. Co., 269 Pa. 213,* photostatic copies were admitted in evidence for comparison with admittedly genuine signatures. And in *C. & I. Elec. Ry. Co. v. Spence, 213 Ill. 220,* x-ray photographs taken by an expert were held admissible. See *Miller v. Mintun, 73 Ark. 183.*

In another case, the use of photographs of fingerprints discovered at the scene of the crime were permitted: *People v. Jenning, 252 Ill. 534.* And in *State v. Knight, 43 Nev. 131,* enlarged diagrams, made by an expert, of the appearance of blood in various conditions through a microscope, were permitted to be used for the purpose of illuminating the witnesses' testimony.

Telephone conversations have been freely admitted in evidence upon the proper identification of the voice: *Penn Tr. Co. v. Ghriest, 86 Pa. Supr. 71.* And the dictograph has also been recognized as a legitimate agency for the discovery of truth: *State v. Minneapolis Milk Co., 124 Minn. 34.* And phonographic records have been received in evidence: *Boyne City v. Anderson, 146 Mich. 328.* But they must be sufficiently verified to be so admitted: *DeCamp v.*

U. S., 10 Fed. (2nd) 984. In *Com. v. Roller, Supra,* a confession taken and recorded by a talking motion picture machine and the record thus made was offered in evidence and admitted and exhibited to the jury on the screen. The court in its opinion held that to have such evidence admitted, it must be shown that the picture is authentic; that it reproduces an exact portrayal of events—the movements and voice.

Evidence of other crimes

The general rule is, that on a trial for the commission of one offense, evidence cannot be given against the defendant of other and unrelated crimes: *Shaffner v. Com., 72 Pa. 60; Com. v. Winter, 289 Pa. 284; Com. v. Dorst, 285 Pa. 232.*

Crimes charged must grow out of it or was caused by it to admit such evidence: *Com. v. Winter, 289 Pa. 284.* And where the offenses are so connected that the proof of one necessarily involves the proving of the other, such proof is admissible: *Com. v. Coles, 265 Pa. 362;* and if the act which is proven may indicate the motive or plan of action of the defendant, either preceding or following the commission of the crime, and is so closely joined thereto as to show the probabliity that he was guilty of the offense charged, it can be properly received: *Com. v. Dwyer, 79 Pa. Supr. 485; Com. v. Elias, 76 Pa. Supr. 576; Com. v. Weiss, 284 Pa. 105.* Guilty knowledge, de-

sign, plan, motive and intent can be shown by evidence of similar and unconnected crimes although the other offenses are beyond the statutory period: *Com. v. Bell, 288 Pa. 29; Com. v. Johnson, 133 Pa. 293.*

Where three burglars are jointly indicted for a murder committed, one may be permitted to testify as to the criminal concert of the three long anterior to the particular crime under investigation, and a verdict of guilty will not be affected because other crimes were mentioned by the witness in a general way, but without any attempt on the part of the commonwealth to elicit evidence of other independent crimes: *Com. v. Biddle, 200 Pa. 647; Com. v. Robb, 284 Pa. 99.*

Thus it has been held the incidental disclosure of the fact that defendant was a deserter from the army will not constitute reversible error: *Com. v. Brown, 264 Pa. 85.*

In Pennsylvania since the Act of May 14, 1925, P. L. 759, which leaves to the jury to decide whether death or life imprisonment should be the penalty for murder, where the defendant, if convicted, the jury should fix the penalty of life imprisonment, it was held not error for the court to admit as a whole defendant's confession in which he admits participating in a robbery in which the killing was committed, although such confession contains admissions of other offenses that may have militated in a general way

against him: *Com. v. Mellor, 294 Pa. 339; Com. v. Flood, 302 Pa. 190; Com. v. Dague, 302 Pa. 13.*

And in *Com. v. Schroeder, 302 Pa. 1,* it was held that, testimony to the effect that defendant was a habitual criminal was admissible when given in rebuttal and explanatory of the defendant's own evidence and give the jury light on the matter of punishment which was a problem they had to solve. They (the jury) had a right to know what kind of a person the defendant was.

Competency of witness

A child nine years of age was held a competent witness in a homicide case. The test is the child's intelligence and his comprehension of an obligation to tell the truth: *Com. v. Troy, 274 Pa. 265; Com. v. Furman, 211 Pa. 549;* see *Com. v. Hutchinson, 19 Mass. 225.*

And a declaration of a child five years of age immediately after the murder and in the presence of the accused and not contradicted by him was properly admitted in evidence: *Com. v. Lisowski, 274 Pa. 222;* see *State v. Whittier, 21 Me. 341.*

An insane person is a competent witness unless his malady is such as to deprive him of that share of understanding which is necessary to enable him to retain in memory the events of which he has been a

witness, and give him knowledge of right or wrong: *Coleman v. Com., 25 Gratt. (Va.) 875; Com. v. Loomis, 270 Pa. 254; Worthington v. Mencer, 17 L. R. A. (Ala.) 407.*

The testimony of a person in a state of intoxication is inadmissible: *Gebhart v. Skinner, 15 S. & R., 235.*

Medical testimony

Expert opinion as to the cause of death is admissible: *Com. v. Mazarella, 279 Pa. 465; Com. v. Puglisi, 276 Pa. 235; Com. v. Crossmiri, 156 Pa. 304;* and the physician may say that the wound did cause death: *State v. Kannish, 23 S. Dak. 465;* and medical testimony as to how the wounds were made, their mortal nature, and how it will bring about death, may be shown when pertinent to the issue: *3 Bishop, 631.*

Where death resulted from poisoning, a chemical analysis of the contents of the deceased's stomach is always desirable: *Joe v. State, 6 Fla. 591;* and it is not necessary that it be so identified as to preclude the possibility of a doubt: *Com. v. Mazarella, 279 Pa. 465.*

Blood stains may be explained by the non-expert as to whether the spots he viewed appeared to be blood: *People v. Gonzales, 35 N. Y. 49; Com. v. Sturtivant, 117 Mass. 122;* and he may also testify as to whether the stains were fresh or not: *People v. Loui Tung, 90 Cal. 377.*

The question of the competency of a witness to testify as an expert is usually for the discretion of the court. It is not necessary that one should be a professed psychiatrist or alienist, in order that his expert opinion may be received. A physician and surgeon who has come into contact with a number of cases of insanity in his general practice may express an opinion as to the sanity of the defendant: *State v. Doiron 150 La. 550; Tendrup v. State, 193 Wis. 482.* A general family physician may be received to give an opinion, whatever may be its weight, as to whatever comes within range of such practice. It would be an impracticable thing to lay down a hard and fast rule as to how much experience a practicing physician must have had with insane people to qualify him to speak as an expert. The weight of his opinion is for the jury: *Com. v. Cavalier, 284 Pa. 311.*

Where the opinion of the expert is based on non-conflicting testimony of others where such testimony is assumed to be true, it should be admitted in evidence. But this should be allowed only where the prior testimony embodies a set of facts of such completeness as to be capable of being put in the form of a valid hypothetical question: *Com. v. Marshall, 287 Pa. 512.*

The opinion evidence of a non-expert witness should not be received unless, in the opinion of the trial judge, the facts testified to were sufficient upon which to base an opinion. But where a lay witness is offered

to express the opinion that the prisoner was sane or insane, he must state facts observed by him, that, in the judgment of the court, tend to justify the opinion which he is about to express: *Com. v. Cavalier, 284 Pa. 311; Com. v. Winter, 289 Pa. 284.*

There is a divergence of view among the authorities as to whether or not, in a murder trial, opinion evidence concerning the distance covered by a bullet which killed the deceased, the direction from which it came, and the position of the body of the victim when struck, may be introduced in evidence. Some courts have ruled such proofs to be inadmissible: *People v. Milner, 122 Cal. 171; Price v. U. S., 2 Okla. Cr. Ct., 449; Dumas v. State, 159 Ala. 42.* Other courts permit a physician, who has examined the wound, to give his opinion concerning the direction from which the blow or shot came, but not the probable position of the parties: *Kennedy v. People, 39 N. Y. 245; Perkins v. Ohio, 5 Ohio Cr. Ct., 597.* The weight of authority seems to be that the examining physician, who has qualified as an expert, may give his views both as to direction and distance of the shot, as well as the position of the parties: As to direction see *Hopt v. Utah, 120 U. S. 430; New York and Ohio cases, Supra;* as to distance see *State v. Asbell, 57 Kan. 398; Boyd v. State, 82 Tenn. 161; Preeper v. The Queen, 15 Can. Sup. Ct. Rep. 401;* as to position of body, see *Com. v. Dorr, 216 Mass. 314; Whar. on*

Homicide, 3rd Ed. sec. 609 and cases there cited; on all three points see *12 Am. & Eng. Enc. Law p. 449.*

The physician must be able to express his opinion in a way intelligible to the lay mind which will be helpful to the jury. If so, his evidence will be accepted: *Com. v. Santos, 275 Pa. 515.*

It was held not to be error to admit in evidence the testimony of a doctor or of the cloth or muslin used in his experiments, where he was called in as an expert to show the effect of powder marks when a pistol is fired at short range: *Sullivan v. Com., 93 Pa. 284.*

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INDEX

Abuse—
as provocation 81

Accessories Before the Fact—
to manslaughter 70

Accidental—
wounds 5
evidence of accidental wounding 5

Accomplice—
statement by accomplice as admission 47

Accused—
declaration made for or against 42
identification of 4, 55

Accusing—
innocent person of committing the crime 3, 85

Acid—
carbolic 17
hydrochloric 17
nitric 16
oxalic 17, 35
prussic 19
sulphuric 16

Actions of Poisons 13, 14

Acts of Accused Indicative of Guilt—
withdrawing money from bank 84
fleeing jurisdiction 85
accusing innocent person of the crime 85
bribing officer and attempting to escape 85
concealment and fear of arrest 85
escaping from jail and recapture 85
possession of the fruits of the crime 85, 86
possession of maps or diagrams of the scene of the crime.. 87
possession of clothing bought near the scene of the crime.. 87

Admissibility of Evidence—See Evidence.

Admissions—

definition of 46
statements acquiesced in by accused 46
negative motion by accused to statement 46
explaining issues 47
confession by accomplice as an 47

Alibi—

refutation of 57
as a defense 83
confirmed by comparison 83
failure of alibi not conclusive against accused 84
Failure of alibi raises no presumption against accused 84

Ammonia—

in inks 35

Animal—

poisons 14
blood 12

Arrest—

duty of one making 59
with warrant 59, 60
without warrant 60
by private person 60
on information received from others 60
when felony is committed 60
for misdemeanor 60
resisting 60
making illegal 61
taking the life of the officer 61
taking life of the person illegally arrested 61
searching the premises, when arrest is made outside 62
search of prisoner while making 62
definition of 59

Arsenic—

as a poison 18

Assault—

slight assault as provocation 81
with stick as provocation 81

Atropine—

as a poison 20

Back—
wound in 6

Belladonna—
as a poison 20

Bichloride of Mercury—
as a poison 19

Black Hand—
demand for money as a provocation 81

Blood—
stains explained by non-expert 97
effacing of 12
animal 12
stain on knife 12
stain on weapon 12
what to do when blood stain is on cloth 11
enlarged diagrams of blood as evidence 93
color of 11
identity of 12

Blue Black Ink 33

Body of Deceased—
moving of 1

Bullet—
fired at acute angle 7
fired at right angles 6
revolver 7
deflection of 7
when it is said to perforate 7
when it is said to penetrate 7
hole in body by 6, 7
marks on 29
peculiarities of 29

Calibre—
of guns 29

Carbolic Acid—
as a poison 17

Capacity—
to commit crime 72

Cause of Death—

expert opinion admissible as to 97
working on fancy of another, not murder 67
putting one into passion of grief or fear, not murder 67

Circumstantial Evidence—

of proving murder by poison 63
motive is necessary in case based on 69
is legal and competent 57
advantages of 54
disadvantages of 54
distinction between direct and 52
as to identity 55
admissibility of 53

Cobalt Nitrate—

in inks 35, 36

Cobalt Salts—

in inks 35

Conclusions—

by witnesses 1

Confessions—

how they may be received by investigator 44
medical examination after it is made 48
of accomplice as an admission 47
questions in confessions must not entrap prisoner 45
validity of 44, 45
from persons mentally deficient 44
of boy 14 years old 45
putting prisoner on guard before he makes 45
must be voluntary 45, 46
to constable 45
to private person 45
made under threat 44
made under promise 44
made under encouragement of hope or favor 44
parole, proof of 44
made in answer to leading questions 44
when they will be received in evidence 44
manner of procuring 44
made under fear 38, 44
made under duress 38, 44
taken by motion picture records 64

Constable—

confession made to 45

Constitution of the U. S.—
article IV of the 61

Corpus Delicti—
when proven 68

Corrosive Poisons 16, 17

Crime—
accusing innocent persons of committing the 3, 85

Curare—
as a poison 19

Dactyloscopy—See Fingerprints.

Deadly Weapon—See Instruments of the Crime.
use of on body of another 70
presumption from use of 70, 72

Death—
from medical neglect as a defense 84
from other cause as a defense 84
is rapid from certain knife wounds 8
cause of 8
expert opinion admissible as to the cause of 97

Deceased—
body of deceased must be found to prove murder 68
body of deceased must be identified 68
deduction from the grasping of objects by 15
position of deceased in poisoning cases from vomit 15
position of deceased from flow of blood from wound 9
position of deceased at time of homicide 9

Defenses of Accused—
insanity 77
drunkenness 79
self-defense 79
provocation 81
wife's misconduct 82
suicide 83
alibi 83
mistake or misadventure 84
death from other causes 84

Definitions—

of arrest 59
of admission 46
of poison 13

Deliberation and Premeditation—

to show intent 73
time to deliberate is never too short 73
shown where gun had to be reloaded 74
circumstances showing 74
a moment is sufficient 75
is not upon the intent but on the act 75

Detecting Crime—

theory of associated ideas 41

Diagrams—

enlarged diagrams of blood as evidence 93

Dictograph—

as evidence 93

Direct Evidence—

distinction between circumstantial and 52
advantages of 54
disadvantages of 54

Direction—

from which bullet came 99
telling direction from which gun is fired 55
of wound when victim is sitting 9
of wound when victim is standing 9
of wound when victim is lying down 9, 10
of knife wound 9

Disappearing Inks 35

Distance—

admissibility of evidence as to distance from which gun was fired 99

Drowning 21

Drunkenness—

defense will only reduce murder to the second degree 79
as a defense 79
refutation of the defense of 58

Dying Declarations—
lingering between life and death for ten days 43
of husband against wife 43
of wife against husband 43
effect of nature of the wound on 42, 43
made for or against accused 42
death must ensue 43
death must not be distant 43
belief in death need not be stated in 43
state of declarant's mind as affecting 43
where victim has hope of recovery but doctor has none 42
where victim has no hope of recovery but doctor has 42

Enfield Rifle 6

Exit Wounds—
powder marks on 8
size of 7, 8

Evidence—
admission of cloth upon which experiments were made ... 52, 100
of the effect of powder marks 100
of distance covered by bullet 99
of direction from which bullet came 99
of the position of the deceased 99
of non-expert in insanity cases 98
hypothetical question in insanity cases 98
explanation of blood stains by non-expert 97
admissibility of fingerprint 26, 27, 28, 93
as to dying declarations 42, 43
as to confessions 44, 45
as to admissions 46
photographs as 34, 50, 51
circumstantial 52
direct 49, 53
legality and competency of circumstantial 57
searching person arrested for 62
admissibility of evidence illegally acquired 62
searching place of arrest for 62
to establish corpus delicti 68
as to motive 68, 69
as to intent 70, 71, 72
as to deliberation and premeditation 73, 74, 75
as to malice 75
in insanity cases as a defense 77
in cases where drunkenness is a defense 79
in cases where self-defense is a defense 79
in cases where provocation is a defense 81
in cases of suicide is a defense 83

photographs of inks as 34
of accused's intentions 71
of the effect of gunshot wounds admissible 97
necessary to convict 49
expert evidence as to fingerprints 26
as to facts within personal knowledge 4, 5
as to the identity of the accused 4
as to tracks made 5
to be secured by investigator 2
in cases where wife's misconduct is a defense 82
in cases where an alibi is a defense 83
in cases where mistake is a defense 84
in cases where the defense is that accused died from other causes 84
from the acts of the accused as an indication of guilt 84, 85, 86, 87
of the instruments of the crime 88, 89
accused giving evidence against himself 90
admissibility of letters from accused to his wife 91
admissibility of letters from accused to his mother 91
admissibility of letters found on accused's person 91
as to the identity of a letter 92
of other crimes 94, 95, 96
competency of infants, insane and drunken persons 96
admissibility of medical testimony 97, 98, 99, 100
phonographic records as 93
photostatic copies as 93
x-ray photographs as 93
photographs of fingerprints as 93
enlarged diagrams of blood as 93
telephone conversations as 93
dictograph as 93
talking motion pictures and records as 94

Evidence of Other Crimes—

desertion from the army 95
crimes must be related 94
crimes must grow out of the crime being tried 94
proving of one proves the other 94
to show guilty knowledge, plan, motive or design 94, 95
admissible when no attempt is made to elicit such evidence .. 95
giving jury light on matter of punishment 95, 96

Experiments—

admission of cloth upon which experiments are made 100
on exhibits 52

Expert Testimony—
as to finger prints 26
as to the cause of death 97
must be intelligible to jury 100
competency in insanity cases 98

Express Malice 76
in manslaughter 70

Favor—
effect of favor in confessions 44

Felon—
taking life of felon who flees 60

Fingerprints—
expert testimony in fingerprint cases 26
forged 28
how to make them distinct 26
effect of wounds on 25
effect of skin disease on 25
types of 24
testimony of layman in fingerprint cases 26
photographs of fingerprints as evidence 93

Footprints—
expert and non-expert testimony in footprint cases 26

Forged—
fingerprints 28

Gold Chloride—
in inks 36

Grasping—
of objects by deceased who was poisoned 15

Guns—
calibre of, from wound 8
recognition from flashes of 3

Gunshot—
evidence of effect of gunshot wounds on clothing 89, 100
wounds 6

Hair—
identification of 30, 31
bleaches and dyes 30, 31

Hanging—
death from 21

Head—
bullet wound in 8

Homicide—See Evidence.
when it occurs 67
is malicious 75, 76
presumption of illegal 76

Hope—
effect on confessions 44

Husband—
declaration of husband against wife 43

Hydrochloric Acid—
as a poison 17

Identification—
of contents of deceased's stomach 97
of letter 92
of body of deceased 68
of criminal 4, 55
of inks and writings 32, 33, 34
of hair 30
of knife 30
of gun 29, 30
of fingerprints 26, 93
of kneeprints 26, 51
of footprints 26, 51
of weapons 29
of blood 11
evidence as to (see evidence) 55
mistaken 4, 55

Illegal—
arrest 61

Implied Malice—
in manslaughter 70

India Ink 34

Infants—
capacity to commit crime 72
confession from 45

Information—

making arrest on information from others 60

Injury—

recollection of past injury as provocation 81
corporeal injury must be inflicted to warrant conviction for murder 67

Inks—

tin chloride in 36
gold chloride in 36
cobalt nitrate in 35, 36
tannin in 33, 35
disappearing 35
invisible 35
synthetic 35
blue black 33
composition of 33, 34, 35
india 34
nigrosene 33
logwood 33
iron nutgall 33
identification of 32
effect on photographs 34
oxalic acid in 35
red 33
potassium chromate in 33

Insanity—

non-expert evidence admissible in cases of 98
opinion of family physician 98
competency of expert witness 98
reasonable doubt will acquit 79
mere doubt will not justify acquittal 79
what may be introduced to negative a defense of 79
cannot be inferred from kinsmen 79
it is a complete defense or none at all 78
caused by injury 78
when one will be acquitted because of 78
proof of premeditation and malice will nullify defense of .. 78
must be habitual or a second nature 77, 78
can be recognized only in the clearest cases 77
must be established from the fair preponderance of the evidence 77
is an affirmative plea 77
as a defense 77, 78, 79
refutation of the defense of 58

Instruments of the Crime—
they should not necessarily produce death 88
duplicate may be submitted in evidence 89
proof that guns were 88, 89
intent established from the 88
officer may take them when arresting offender 88
clubs 89
steel pin bolt 89
shovel 90
stick with strap 90
hammer 90
hands and feet 90

Intent 68
question for the jury 88
from the instruments of the crime 70
can be shown by deliberation and premeditation 74
alleging the serving of a jail term as 72
denial of intent by accused 72
from number of shots fired 72
evidence of 72
presumption of 70, 72
where intent is wanting, murder is of second degree 70
in involuntary manslaughter 70, 71
from direction of knife wound 8
in accidental woundings 5
in suicide woundings 6

Intent to Kill—
presumption of 72

Investigation—
securing physical facts 49
of poison cases 13
where there are no eye witnesses 5
where there are eye witnesses 1
made at scene of the crime 1

Investigator—
analysis of case by 63
questioning by 2, 37

Invisible Ink 35

Iodine—
as a poison 18

Involuntary Manslaughter—
under indictment for murder and manslaughter there can be no conviction for 71
intent in 70
malice in 70
what it consists of 70

Iron Nutgall Ink 33

Irritant Poisons 17, 18, 19

Kneeprints—
testimony of layman in kneeprint cases 26

Knife—
wounds 8
identification of 30

Laudanum—
as a poison 19

Leading Questions—
effect on confessions 44

Letters—
found in accused's pocket admissible 91
from one spouse to another 91
from accused to his mother 91
protection of 52
identification of 92

Logwood Ink 33

Malice—
presumption of 75
all homicide is with 75
express 76
in poison cases 76
where wanting reduces murder to manslaughter 70
in involuntary manslaughter 70, 71

Manslaughter—
malice wanting in 70
accessories before the fact in 70
involuntary 70

Measurements—
discrepency in wound and blade 8, 30
of wounds 8

Medical Examination—
of accused after making confession 48

Medical Testimony 97, 98, 99, 100

Mentally Deficient Person—
confessions from 44, 45

Misdemeanor—
officer taking life of person committing 61

Misspelt Words—
in letters 32

Mistake—
as a defense 84

Mistaken Identities 4, 55

Moonlight—
Recognition in 3, 55

Morphine—
as a poison 20

Motive—
definition 68
when important 69
in cases based on circumstantial evidence 69
may be proved 69

Murder—
there must be a corporeal injury inflicted 67
working on fancy of another not 67
putting one in passion of grief or fear not 67
death must be consistent with criminal act to warrant conviction of 68
is reduced to second degree when intent is wanting 70
body must be found and identified 68

Muriatic Acid—
as a poison 17

Neurotic Poisons 19, 20

Nigrosene Ink 33

Nitric Acid—
as a poison 16

Notes of the Investigator 3
chronological order of the analysis of the case 63, 64
elimination plan of 64, 65

Officer—
taking life of person illegally arrested 61

Oil of Vitriol—
as a poison 16

Oxalic Acid—
as a poison 17

Penetration—
by bullet 7

Perforation—
by bullet 7

Phonographic Records—
as evidence 93

Photographs—
detection of ink by 34
admissibility of 50, 51
of fingerprints as evidence 93

Photostatic Copies—
as evidence 63

Physiological Test—
of poisons 14

Poisons—
chemical analysis of contents of stomach for 97
circumstantial evidence necessary in some cases to prove murder by 68
arsenic 18
bichloride of mercury 19
carbolic acid 17
curare 19
hydrochloric acid 17
iodine 18
laudanum 19

nitric acid 16
oxalic acid 17
prussic acid 19
strychnine 19
sulphuric acid 16
neurotic 19, 20
irritant 17, 18
corrosive 16, 17
used by suicides 15
rigidity of deceased in poison cases 15
vomiting from—see specific poison 15
position of the deceased in poison cases 15
physiological tests for 14
animal 14
vegetable 14
proof of presence of 14
actions of 14
medium of taking 13
symptoms of—see specific poisons 13
definition of 13
investigation of poison cases 13
belladonna 20
morphine 20

Position—

of deceased 99
of deceased in poison cases 15

Potash—

use of potash to efface blood stains 12

Powder—

effect of powder marks 100
smokeless powder 7
tattooing from 7

Presumption—

failure of alibi raises no presumption against accused 84
in self-defense 79
of homicide being illegal 75, 77
of malice 75
of intent to kill 70, 72
from use of deadly weapon 70, 72

Prisoner—

taking life of prisoner while making illegal arrest 61
taking the life of officer making illegal arrest 61
searching of 62

Private Person—
may make arrest 60
confession to 45

Procuring—
confessions 45

Profanity—
as a defense as provocation 81

Promise—
effect of promise on confession 44

Proof—
of motive 68, 69
in insanity cases 77, 78
in cases where drunkenness is a defense 79
in cases where alibi is a defense 83
in cases where self-defense is a defense 79
in cases where provocation is a defense 81
parol proof of confessions 44
of presence of poisons 14

Property—
taken in search must be of evidential value 62

Provocation—
threats and hostile demonstrations 81, 82
duty of person assaulted 82
as a right to kill 81, 82
assault with a stick as 81
must be sudden and sufficient 81
black hand demands for money as 81
recollection of past injury as 81
slight assault as 81
words of abuse as 81
words of reproach as 81
profanity as 81

Prussic Acid—
as a poison 19

Pus in Wound—
significance of 10

Questioning of Witnesses 1, 37

Reagents—
for inks 54

Recognition—
in moonlight 55
in starlight 55
by witness 4, 55

Refutation—
of drunkenness 58
of insanity 58
of alibi 57

Reloading Gun—
as act of deliberation 74

Reproach—
as a provocation 81

Revolver—
bullets 6, 7

Rifles 7

Search and Seizure—
explanation by accused of the possessing of the fruits of crime 86
article IV of the Constitution 61
making search of room while making arrest 62
of prisoner 62
searching of premises when arrest is made outside 62
property taken must be of evidential value 62
use of illegally acquired evidence 62

Self-Defense—
threats by deceased 80, 81
not established when there is a doubt 80
must be shown by a fair preponderance of the evidence 80
does not have to be shown beyond a reasonable doubt 80
admits the killing 80
is an affirmative plea 80
there is no presumption as to 79
deceased must be the aggressor 80, 81

Shooting—
to wound negatived 71, 72

Sign—
negative sign by accused in reply to statement 46

Silver Nitrate—
in invisible inks 35

Skin—
elasticity of 7, 8, 30

Soda—
use of soda to efface blood stains 12

Stab Wounds 8

Starlight—
recognition in 3, 55

Statements—
when voluntary statement may be used 46
acquiescing in statements as admission 46
in the presence of accused 46
denial of statement by sign 46
by accomplice as an admission 47

Strangulation 22

Strychnine—
as a poison 19

Suicide—
what must be shown to warrant death by 83
as a defense 83
stab wounds in 8
presumed from knife wounds 8
wounds from blunt instrument 6
intent in suicide wounding 6
closeness of weapon in 5
wounds 5, 6, 8

Sulphuric Acid—
as a poison 16

Suspicion—
diverting suspicion to an innocent person 3, 85

Swollen Wounds 10

Sympathy—
photographs arousing 50

Symptoms of Poisonings—See Specific Poisons.

Synthetic Inks 35

Talking Motion Picture—
as evidence 94
records as evidence 94
of confession as evidence 94

Tannin—
in inks 33, 35

Tattooing—
from gun powder 7

Telephone—
conversation as evidence 93

Theory of Associated Ideas 41

Third Degree 38

Threats—
effect on confessions 38, 44
as a defense in provocation 81

Time—
intervening between the threat and the act to warrant killing 82
in deliberation and premeditation 73, 74
effect of time on dying declarations 43

Tin Chloride—
in inks 36

Trial of Adolf Beck 4

Validity—
of confession 44, 45

Vegetable Poisons 14

Voluntary Statements—
when they may be used 44, 46

Vomiting—
as a sign of poisoning (See Specific Poison) 15

Warrant—
arrest without 60
arrest with 59, 60

Weapons—
identification of 29
medical examiner's opinion as to weapon 10, 11
position in accidents 5

Wife—
declaration against her husband 43
misconduct of wife as defense for murder 82

Witness—
infant as 96
test of child's intelligence 96
declaration of child 5 years admitted in evidence 96
insane witness is competent 96, 97
intoxicated witness not allowed to testify 97
questioning of witness who memorized story 40
concealing vital fact 39
questioning the 2, 37
stating belief, opinion or conclusion 4, 5, 97
conclusions by 2

Writings—
typewritten 36
misspelt words in 32
identification of 31, 32, 33

Wounds—
physician may say wound did cause death 97
significance of swelling of 10
significance of pus in 10
effect of time on 10
escape of blood from 10
direction when inflicted while lying down 9, 10
direction when murderer standing and victim sitting 9
direction when murderer and victim are standing 9
measurements of 9
stab 8, 9
in head by bullet 8
exit 7, 8
powder marks around 7, 8, 109
from shot gun 7
tearing 7
edges of exit 7
edges of 7
entrance 6, 7
by bullet fired at right angles to victim 6, 7
gunshot 6
from blunt instrument 6
in back not indicative of suicide 6
accidental 5, 6
direction of 5
situation of 5
suicidal 5, 6

X-Ray—
photographs as evidence 93